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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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TOM MASON, MARCO CVITANICH and MITCHELL CVITANICH, Owners of DIESEL SCREW "BLUE SKY", her tackle, apparel, engines, furniture, etc.,

Appellants,

vs.

JOHN EVANISEVICH,

Appellee.

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Apostles on Appeal

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Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.

**FILED**

MAY 28 1942



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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# NAMES AND ADDRESSES OF PROCTORS

For Appellants:

LASHER B. GALLAGHER, Esq.,  
458 South Spring Street,  
Los Angeles, California.

For Appellee:

DAVID A. FALL, Esq.,  
333 West Sixth Street,  
San Pedro, California. [1\*]

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In the United States Circuit Court of Appeals  
For the Ninth Circuit  
No. 831-B

DIESEL SCREW "BLUE SKY", TOM MASON,  
MARCO CVITANICH and MITCHELL  
CVITANICH,

Appellants,

vs.

JOHN EVANISEVICH,

Appellee.

## CITATION

United States of America—ss.

To John Evanisevich, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 9th day of April, A. D. 1942, pursuant to an order allowing appeal filed on Feb. 28th, 1942, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 831-B, Central Division, wherein Diesel Screw "Blue Sky", Tom Mason, Marco Cvitanich and Mitchell Cvitanich are appellants and you are appellee, to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Campbell E. Beaumont, United States District Judge for the Southern District of California, this 28th day of February, A. D. 1942, and of the Independence of the United States, the one hundred and sixty Sixth.

C. E. BEAUMONT,  
U. S. District Judge for the Southern District of  
California.

Service of a copy of the foregoing Citation is acknowledged this 4th day of March, 1942. Also copies of petition for appeal, order allowing appeal, notice of appeal and assignment of errors.

DAVID A. FALL,  
Attorney for Appellee.

[Endorsed]: Filed Mar. 10, 1942. [2]

[Title of District Court and Cause.]

LIBEL IN REM IN ADMIRALTY

To the Honorable Judges of the District Court of  
the United States, Southern District of Cali-  
fornia, Central Division,

In Admiralty.

The libel of John Evanisevich, late a fisherman seaman on board the Diesel Screw "Blue Sky", whereof Tom Mason, now is and has been at all times herein mentioned, master, against the said ship, her tackle, apparel, engines, furniture, etc., in a cause of wages, civil and maritime, alleges as follows:

First. That sometime in the month of August of 1939, the said Diesel Screw "Blue Sky", then lying in the Port of Los Angeles, destined for a six months' sardine fishing season, the then master, Tom Mason, by himself, hired this libelant as a fisherman seaman for the said season, on the one seventeenth *law* or share of what should be taken, as wages, and this libelant then accepted and entered into his duties as a member of the crew of the said "Blue Sky."

Second. That on or about the 1st day of September 1939, [3] this libelant entered into the duties as a member of the crew of said ship, preparing said ship and nets for the season.

Third: That on the 22th day of September, 1939, just before the said ship started upon its fishing

for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 9th day of April, A. D. 1942, pursuant to an order allowing appeal filed on Feb. 28th, 1942, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 831-B, Central Division, wherein Diesel Screw "Blue Sky", Tom Mason, Marco Cvitanich and Mitchell Cvitanich are appellants and you are appellee, to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Campbell E. Beaumont, United States District Judge for the Southern District of California, this 28th day of February, A. D. 1942, and of the Independence of the United States, the one hundred and sixty Sixth.

C. E. BEAUMONT,

U. S. District Judge for the Southern District of California.

Service of a copy of the foregoing Citation is acknowledged this 4th day of March, 1942. Also copies of petition for appeal, order allowing appeal, notice of appeal and assignment of errors.

DAVID A. FALL,  
Attorney for Appellee.

[Endorsed]: Filed Mar. 10, 1942. [2]

[Title of District Court and Cause.]

LIBEL IN REM IN ADMIRALTY

To the Honorable Judges of the District Court of  
the United States, Southern District of Cali-  
fornia, Central Division,

In Admiralty.

The libel of John Evanisevich, late a fisherman seaman on board the Diesel Screw "Blue Sky", whereof Tom Mason, now is and has been at all times herein mentioned, master, against the said ship, her tackle, apparel, engines, furniture, etc., in a cause of wages, civil and maritime, alleges as follows:

First. That sometime in the month of August of 1939, the said Diesel Screw "Blue Sky", then lying in the Port of Los Angeles, destined for a six months' sardine fishing season, the then master, Tom Mason, by himself, hired this libelant as a fisherman seaman for the said season, on the one seventeenth *law* or share of what should be taken, as wages, and this libelant then accepted and entered into his duties as a member of the crew of the said "Blue Sky."

Second. That on or about the 1st day of September 1939, [3] this libelant entered into the duties as a member of the crew of said ship, preparing said ship and nets for the season.

Third: That on the 22th day of September, 1939, just before the said ship started upon its fishing

season for Sardines, and while this libelant was engaged in the service of his said ship, and while it was then lying in the navigable waters of the Port of Los Angeles, and while doing his duty and obeying the commands of the master, slipped from a ladder on said ship, severely injuring his left arm and shoulder. That it became necessary immediately thereafter that libelant go under the treatment of a physician and surgeon. That ever since said date libelant has been unable to use his said arm by reason of the injuries sustained on said date, and still remains under the care of a physician and surgeon for the treatment of said injuries. That libelant will be completely disabled from work for a long and indeterminate period of time as a result of said injuries and will necessarily be under the care of a physician and surgeon for the treatment of said injuries for a long and indeterminate period of time.

Fourth: That while this libelant has so been confined and unable to work, the said ship engaged in fishing during the proposed sardine season and during said season the ship took and caught a great quantity of sardines, which libelant is informed and believes and alleges that his one seventeenth lay or share of said catch being worth the sum of Twelve Hundred (\$1200.00) Dollars and upwards, which the master and owners of the said ship have hitherto refused and still refuse to pay, to the great damage of the libelant.

Fifth. That by reason of the injuries so received in the service of the said vessel, as above stated, libelant's left arm has been left useless, and by reason thereof has been put to great expense for the services of a physician and surgeon. That *at* the [4] libelant is informed that the reasonable cost of the services of the physician and surgeon for and to this date is the sum of One Hundred Seventy-Five (\$175.00) Dollars.

Sixth: That the said Diesel Screw "Blue Sky", is an American vessel and now is and will be in and during the currency of process herein, within the District of Southern California, and in the jurisdiction of this honorable court.

Seventh. That libelant is a seaman, within the designation of persons permitted to sue herein without furnishing Bond for or prepayment of or making deposit to secure fees and costs for the purpose of entering in and prosecuting suits conformable to the provisions of Title 28, Sec. 837, U. S. C. A.

Eighth. That by reason of the injuries as aforesaid libelant claims to be entitled to demand and have the said ship pay his reasonable expenses already incurred and hereafter to be incurred in and about his cure, and his reasonable support since his said injury and till he is cured, which sum is at the rate of Three (\$3.00) Dollars per day. That the reasonable amount accrued for such support to this date is Five Hundred Seventy (\$570.00) Dollars.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court. In verification whereof, if denied, the libelant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the libelant prays that process in due form of law, according to the course of this Honorable Court in causes of Admiralty and Maritime jurisdiction, may issue against the said vessel, her tackle, apparel, engines and furniture, and that all persons, having or pretending to have any right, title or interest therein, may be cited to appear and to answer all and singular the [5] matters hereinbefore set forth, and that this Honorable Court may be pleased to decree the payment of the wages and the expenses of care and maintenance, as well as wages by the share, as aforesaid, with costs, and that the libelant may have such other relief in the premises as in law and justice he may be entitled to receive.

DAVID A. FALL

333 W. 6th St. San Pedro.

Phone 2811

Proctor for Libelant. [6]

State of California,  
County of Los Angeles—ss.

John Evanisevich, being first duly sworn, deposes and says: That he is the libelant in the above entitled action; that he has read the foregoing libel



and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ JOHN EVANISEVICH

Subscribed and sworn to before me this 29th day of February, 1940.

[Seal] /s/ HORTENSE CLARK,  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Mar. 2, 1940. [7]

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District Court of the United States  
Southern District of California  
MONITION AND ATTACHMENT

The President of the United States of America  
To the Marshal of the United States for the Southern District of California, Greeting:

Whereas, a libel in rem hath been filed in the District Court of the United States for the Southern District of California, on the 2nd day of March, in the year of our Lord one thousand nine hundred and forty, by John Evanisevich, Libelant vs. Diesel Screw "Blue Sky", her tackle, apparel, engines, and furniture, etc., Case No. 831-B Adm., for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said

Court in that behalf to be made, and that all persons interested in the said Diesel Screw "Blue Sky" or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said Diesel Screw "Blue Sky" or vessel, her tackle, etc., may for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libellant.

You are, therefore, hereby commanded to attach the said Diesel Screw "Blue Sky" or vessel, her tackle, etc., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Southern District of California, on the 25th day of March, A. D. 1940, at 10:00 o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Honorable C. E. Beaumont, Judge of said Court, at the City of Los Angeles, in the Southern District of California, this 2nd day of March, in the year of our Lord one thousand nine

hundred and forty, and of our independence the one hundred sixty-fourth.

(Seal) R. S. ZIMMERMAN,  
Clerk.

By C. E. HOLLISTER,  
Deputy Clerk.

DAVID A. FALL,  
333 W. 6th Street,  
San Pedro, California,  
Proctor for Libelant. [8]

Marshal's Civil Docket No. 21915

No. 831-B Adm.

United States District Court  
Southern District of California  
Central Division

John Evanisevich

vs.

Diesel Screw "Blue Sky"

Monition returnable March 25, 1940.

In obedience to the within Monition, I attached the Diesel Screw Blue Sky therein described, on the 3rd day of March, 1940, and have given due notice to all persons claiming the same, that this Court will, on the 25th day of March, 1940 (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the

trial and condemnation thereof, should no claim be interposed for the same.

ROBERT E. CLARK,

U. S. Marshal.

By C. G. MERTZ,

Deputy.

Dated March 4th, 1940.

[Endorsed]: Filed Mar. 7, 1940.

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[Title of District Court and Cause.]

### CLAIM

To the Honorable Judges of the District Court of the United States, Southern District of California, Central Division:

The claim of Tom Mason, Marco Cvitanich and Mitchell Cvitanich to the Diesel Screw "Blue Sky" her tackle, apparel, engines, and furniture, etc., now in the custody of the United States Marshal for the Southern District of California, Central Division, at the suit of the libelant above named, alleges:

That said Tom Mason, Marco Cvitanich and Mitchell Cvitanich are the true and bona fide owners of the said Diesel Screw "Blue Sky", her tackle, apparel, engines, and furniture, etc. and that no other persons are the owners thereof and no other person is an owner thereof and the said Tom

Mason, Marco Cvitanich and Mitchell Cvitanich hereby claim the same.

Claimants present and file herewith a bond stipulating payment of costs in the sum of \$250.00 which said bond has been executed by an approved corporate surety, to wit, the Fireman's Fund Indemnity Company, a corporation, and claimants file and present herewith a bond in the sum of \$4,000.00, which said bond has been executed by an approved corporate surety, to wit, the Fireman's Fund Indemnity Company, a corporation, as suerty and Tom Mason, Marco Cvitanich and Mitchell Cvitanich as principals.

Wherefore claimants pray that this *Honorable approve* said [10] bonds and each of them and claimants further pray that this Honorable Court make and file an order releasing the said Diesel Screw "Blue Sky", her tackle, apparel, engines and furniture, etc., to the claimants upon the approval of said bonds and each thereof.

TOM MASON

MARCO CVITANICH

MITCHELL CVITANICH

LASHER B. GALLAGHER

Proctors for Claimants [11]

State of California,  
County of Los Angeles—ss.

Tom Mason, Marco Cvitanich and Mitchell Cvitanich being by me first duly sworn, depose and say: that they are the claimants in the above en-

titled action; that they have read the foregoing claim and knows the contents thereof; and that the same is true of their own knowledge, except as to the matters which are therein stated upon their information or belief, and as to those matters that he believes it to be true.

TOM MASON

MARKO CVITANICH

MICHIEL CVITANICH

Subscribed and sworn to before me this 4th day of March, 1940.

(Seal)

ENES SARVELLO

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed Mar. 4, 1940. [12]

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[Title of District Court and Cause.]

ORDER

Whereas, a libel has been filed by the above named libelant against the respondent Diesel Screw "Blue Sky", her tackle, apparel, engines, and furniture, etc., for the reasons and causes in said libel mentioned; and

Whereas, a bond stipulating payment of costs in the sum of \$250.00 has been executed by the Fireman's Fund Indemnity Company, a corporation, as surety; and

Whereas, said bond has been filed with the above entitled court; and

Whereas, a bond in the sum of \$4,000.00 has been executed by the Fireman's Fund Indemnity Company, a corporation, as surety, and Tom Mason, Marco Cvitanich and Mitchell Cvitanich as principals; and

Whereas, said bond has been filed with the above entitled court, and the said bond being conditioned that in the event of failure of the principals Tom Mason, Marco Cvitanich and Mitchell Cvitanich to abide by all orders of this court made or to be made herein, then said surety will pay the amount ordered by the final decree, not exceeding the penal sum of \$4,000.00; and

Whereas, said bonds have been and each of them is hereby approved by the court; [13]

It is hereby ordered that the Diesel Screw "Blue Sky", her tackle, apparel, engines and furniture, etc., be forthwith released to the claimants Tom Mason, Marco Cvitanich and Mitchell Cvitanich.

Done in open court this 4th day of March, 1940.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Mar. 4, 1940. [14]

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[Title of District Court and Cause.]

STIPULATION AND BOND FOR RELEASE

Know All Men by These Presents:

Whereas, the above named Libelant has filed, or is about to file herein, a libel upon a certain claim

in the total amount of Nineteen Hundred Forty-five and no/100 Dollars (\$1945.00) against the Diesel Screw "Blue Sky", her tackle, apparel, engines, furniture and etc., Respondent, and

Whereas, said Diesel Screw "Blue Sky" has been, or is about to be, seized and attached by the United States Marshal for the Southern District of California, under and by virtue of process issued by the above entitled Court; and,

Whereas, Tom Mason, Marco Cvitanich and Mitchell Cvitanich have filed, or are about to file, a claim to said Diesel Screw "Blue Sky" as owners thereof, and a Stipulation for Costs in the usual form; and are applying for the release of said Diesel Screw from said seizure and attachment, all in accordance with the Admiralty rules and practice of the above entitled Court; and

The parties hereto hereby consenting that in case of default or contumacy on the part of the Principal or Surety, execution to the amount of Four Thousand and no/100 Dollars (\$4,000.00) may issue against their goods, chattels and land.

Now, therefore, the said Tom Mason, Marco Cvitanich and Mitchell [15] Cvitanich, as Principal, and Fireman's Fund Indemnity Company, a corporation, qualified to act as a surety in this Court, as Surety, are held and firmly bound unto Robert E. Clark, United States Marshal for the Southern District of California, his successors, heirs, executors, administrators and assigns, and unto Libelant herein, in the full sum of Four Thousand and



no/100 Dollars (\$4,000.00), for the payment of which sum the said Principal and Surety bind themselves, their respective successors and assigns, firmly by these presents; the condition of this obligation being such that if the said Tom Mason, Marco Cvitanich and Mitchell Cvitanich, as Principal herein, shall abide by and perform all orders of this Court in said cause, interlocutory or final, and shall pay whatever amount may be awarded against said Tom Mason, Marco Cvitanich and Mitchell Cvitanich herein by the final decree rendered in said cause by this Court, or by an Appellate Court, if an appeal intervene, with interest, (not exceeding the said full penal sum of Four Thousand and no/100 Dollars (\$4,000.00), then this obligation to be void; otherwise, the same shall remain in full force and effect.

In witness whereof, the said parties hereto have hereunto affixed their hands and seals this 4th day of March, 1940.

TOM MASON  
MARKO CVITANICH  
MICHIEL CVITANICH

Principal  
FIREMAN'S FUND INDEMNITY  
COMPANY

(Seal) By L. H. SCHWOBEDA  
Attorney-in-Fact

State of California,  
County of Los Angeles—ss.

On this 4th day of March in the year one thousand nine hundred and forty before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and [16] sworn, personally appeared L. H. Schwobeda known to me to be the Attorney in Fact of Fireman's Fund Indemnity Company the company described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument on behalf of the said company, and he duly acknowledged to me that such company executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said County of Los Angeles the day and year in this certificate first above written.

(Seal) M. E. BEETH

Notary Public in and for the County of Los Angeles,  
State of California.

My Commission expires March 23, 1941.

Examined and recommended for approval as provided in Rule 28.

LASHER B. GALLAGHER  
Proctors for Claimants

I hereby approve the foregoing bond this 4th day of March 1940.

PAUL J. McCORMICK  
United States District Judge

[Endorsed]: Filed Mar. 4, 1940. [17]

[Title of District Court and Cause.]

ANSWER

Come now the respondent and claimants and answer the libel on file herein as follows:

Article I

Answering the first article: Deny that libelant was, at any time, employed as a seaman and deny that libelant was or is a seaman and deny that libelant was hired as a member of the crew of the "Blue Sky" and deny that he was or is entitled to any lay or share as wages, or otherwise.

Article II

Answering the second article: Deny that on the 1st day of September, 1939, or at any other time, the libelant entered into the performance of any duty as a member of the crew of the "Blue Sky" and allege that the only duties which the libelant performed were those customarily performed by a fisherman.

Article III

Answering the third article: Deny that at any time the libelant was injured while engaged in the service of the "Blue Sea" and deny that at any time or place, when or where libelant sustained any injury, he was performing any duty or obeying any command of the master or that while in the service of the ship he slipped from a ladder or severely, or at all, injured his left arm or [18] shoulder. Respondent and claimants have no information or

belief upon the subject sufficient to enable them, or any of them, to answer the balance of the allegations in the third article and placing their denial thereof upon said ground, deny said allegations and each thereof.

#### Article IV

Answering the fourth article: Allege that prior to the commencement of the Sardine season in 1939, the libelant sustained some injury and that thereafter and while the libelant was absent from said ship and while he was performing no duty of any kind or character, the said ship took and caught Sardines, but deny that the libelant was or is entitled to a one-seventeenth lay or share or any percentage or share of any catch and deny that the libelant was entitled to any share or lay, either in the sum of \$1200.00, or in any other sum whatsoever or at all.

#### Article V

Answering the fifth article: Respondent and claimants have no information or belief upon the subject sufficient to enable them, or any of them, to answer the allegations set forth in the fifth article and placing their denial thereof upon said ground, deny said allegations and each thereof and deny that the cost of the services of any physician or surgeon was or is the sum of \$175.00 or any other sum whatsoever or at all.

#### Article VI

Answering the sixth article: Respondent and claimants admit the allegations thereof.

Article VII

Answering the seventh article: Deny that libelant is a seaman or is within the designation of persons permitted to sue herein without furnishing bond for or prepayment of or making deposit to secure fees or costs either for the purpose of entering in or prosecuting suits conformable to the provisions of Title 28, [19] Sec. 837, U.S.C.A., or otherwise.

Article VIII

Answering the eighth article: Deny that the libelant is entitled to demand or to have the ship pay any expense incurred or hereafter to be incurred, in or about his cure or his support, or that the libelant is entitled to demand or have the ship pay therefor, or at all, at the rate of \$3.00 or any other rate per day, or otherwise. Deny that the sum of \$570.00 or any other sum is a reasonable amount for support.

Article IX

Answering the ninth article: Deny that all of the premises are, or that any premise is true or within the admiralty or maritime jurisdiction of this Court and allege that the type of fishing done by the "Blue Sky" was purely local in character and that claim, if any, of the libelant was and is within the jurisdiction of the Industrial Accident Commission of the State of California.

Wherefore, respondent and claimants pray that libelant take nothing by his said libel and that respondent and claimants recover their costs herein

and such other and further relief as to the court may seem just and equitable.

LASHER B. GALLAGHER

Proctor for Respondent  
and Claimants [20]

State of California,  
County of Los Angeles—ss.

Tom Mason being by me first duly sworn, deposes and says: that he is one of the claimants in the above entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true. Affiant makes this verification on his own behalf and on behalf of his co-claimants and on behalf of respondent.

TOM MASON

Subscribed and sworn to before me this 18 day of March, 1940.

(Seal)

W. D. BOWER

Notary Public in and for the County of Los Angeles,  
State of California.

My Commission expires March 18, 1942.

[Endorsed]: Filed Mar. 19, 1940. [21]

[Title of District Court and Cause.]

### ORDER FOR JUDGMENT

Judgment is ordered for libelant for "lay" of season's sardine catch, which amount may be agreed upon by parties. If it cannot be so agreed upon, then the court will reopen case for receiving further testimony regarding such amount.

The court is of the opinion that a reasonable offer of hospital service was made to libelant, and that he refused such offer.

Libelant has failed to show expenditure or incurrence of any sum for maintenance.

March 29, 1941.

BEAUMONT, J.

[Endorsed]: Filed Mar. 31, 1941. [24]

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[Title of District Court and Cause.]

### STIPULATION AS TO REASONABLE VALUE OF MAINTENANCE

It is stipulated by and between the Libelant and Respondent above named, by and through their respective counsel, that in the event the above entitled Court finds that libelant herein is entitled to recover maintenance, the reasonable value of such maintenance is \$1.50 per day.

It is expressly understood that this stipulation

is not an agreement by respondent that libelant is entitled to recover maintenance.

Dated: August 2, 1941.

(s) LASHER B. GALLAGHER  
Proctor for Respondent

(s) DAVID A. FALL  
Proctor for Libelant

[Endorsed]: Filed Oct. 8, 1941. [24a]

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### ORDER

At a stated term, to wit: The September Term, A. D. 1941, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 8th day of October in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable C. E. Beaumont,  
District Judge.

[Title of Cause.]

David B. Fall, Esq., appearing for the libelant, and Lasher B. Gallagher, Esq., appearing for the claimants and respondents, come before the Court, and Attorney Gallagher states that the parties to this action have stipulated that the amount of the share is \$1,130.70, but that he objects to the intro-



duction of said fact in evidence upon the ground that there is no proof showing that libelant was injured while in the service of the vessel and so forth. The Court overrules objection and allows exception to respondents.

Counsel state that there is lack of agreement on what took place at the hearing on July 21, 1941, and Attorney Gallagher requests record show his objection to the making of the order reopening the case, states his grounds, and argues. The Court overrules the objection and allows exception to respondents. The case is ordered reopened for further evidence to be presented either by stipulation or by testimony in court. Exception allowed respondents.

Attorney Fall files stipulation as to the reasonable amount of maintenance if allowed. Attorney Gallagher objects to the introduction of the stipulated fact in evidence, states grounds and argues. The Court overrules objection. Exception to respondents.

The case now being finally submitted to the Court for decision, the Court orders judgment for the libelant. Attorney Gallagher requests special findings of fact as to each separate allegation of the libel, and it is ordered that Attorney Fall present findings and form of judgment in accordance with previous order of the Court and stipulation filed this date. [24b]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

This cause having come on regularly to be heard on the pleadings and proofs and having been argued and submitted by the advocates for the respective parties, the court finds the facts as follows:

I.

That it is true that sometime in the month of August 1939, the Diesel Screw "Blue Sky", was then lying in the Port of Los Angeles, destined for a six months sardine fishing season, and the then Master Tom Mason, by himself, hired this libelant as a fisherman seaman for the said season, on the one seventeenth lay or share of what should be taken, as wages, and this libelant then accepted and entered into his duties as a member of the crew of the said "Blue Sky".

II.

That it is true that on or about the 1st day of September, 1939 the libelant entered into the duties as a member of the crew of said ship, preparing said ship and nets for the season;

III.

That it is true that on the 22nd day of September. [25] 1939, just before the said ship started upon its fishing season for sardines, and while the libelant was engaged in the service of his said ship

in that he was in the act of departing from said ship after performance of his duties as a member of said ship's crew and while he was subject to call of duty as a member of the crew of said ship which was then and there lying in the navigable waters of the Port of Los Angeles, slipped from a ladder and part of the equipment of said ship, and the adjoining wharf, severely injuring his left arm and shoulder. That it is true that it became necessary within four days thereafter for libelant to go under the treatment of a physician and surgeon for said injuries. That from the date of injury to July 12, 1940, libelant was unable gainfully to use his said arm by reason of the injuries so sustained and was under the care of a physician and surgeon for the treatment of said injuries during said period of time.

#### IV.

That it is true that while this libelant was so confined and unable to work, the said ship engaged in fishing until about the first of March, 1940, the period of the proposed sardine season, and during said season the ship took and caught a great quantity of sardines, of which the libelant's one seventeenth lay or share was worth the sum of \$1,130.78, which the master and owners of the said ship refused to pay to the libelant.

#### V.

That it is true that by reason of the injuries so received in the service of said vessel, as aforesaid,

libelant's left arm was useless and incapacitated until the 12th day of July, 1940, and by reason thereof he was put to the expense of \$347.00 for a physician's services, but said libelant waived his right to recover for said expense by reason of his failure to accept the tender of medical care through a certificate to the Marine Hospital tendered the libelant by the Master of the "Blue Sky". [26]

#### VI.

That it is true that the said Diesel Screw "Blue Sky" is an American vessel and was during the currency of process herein, within the District Court of Southern California, and in the jurisdiction of this court.

#### VII.

That it is true that the libelant is a seaman, within the designation of persons permitted to sue herein without furnishing Bond for, or prepayment of or making deposit to secure fees and costs for the purpose of entering in and prosecuting suits conformable to the provisions of Title 28, Sec. 837, U.S.C.A.

#### VIII.

That it is true that by reason of the injuries as aforesaid libelant is entitled to demand and have the said ship pay his reasonable expenses incurred in and about his support from the date of injury to the 12th day of July, 1940, which said sum is at the rate of One and 50/100 (\$1.50) Dollars per day, and the amount due libelant from the 22nd day

of September, 1939 to July 12, 1940, is the sum of Four Hundred Thirty-one (\$431.00) Dollars, total amount thereof accruing on July 12, 1940, with interest at the rate of seven (7%) percent per annum from said date.

IX.

That it is true that all and singular the premises are true, and within the admiralty jurisdiction of this honorable court.

From the foregoing, the court concludes that:

I.

The libelant is entitled to a judgment against respondent in the sum of One Thousand One Hundred Thirty and 78/100 (\$1,130.78) Dollars as wages for the sardine season ending on or about the 1st day of March, 1940, with interest thereon from [27] said March 1, 1940, at the rate of 7% per annum, and for the additional sum of \$431.00, as maintenance from September 22nd, 1939, to July 12, 1940, with interest thereon from July 12, 1940, at the rate of 7% per annum.

II.

That libelant is not entitled to recover for his expenses incurred for the treatment of his injuries.

III.

That upon motion of libelant a Final Decree shall be entered in accordance herewith providing therein that the decree be satisfied or an appeal be taken

therefrom within ten days after service of Notice of Entry of said decree on the claimant or his proctor, or the stipulators for costs and value on the part of the said Diesel Screw "Blue Sky", shall cause the engagements of their stipulations to be performed, or show cause within four days after said ten days, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands, to satisfy the decree.

Dated: February 20th, 1942.

C. E. BEAUMONT,  
United States District Judge.

[Endorsed]: Filed Feb. 20, 1942 [28]

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In the United States District Court, Southern District of California, Central Division.

In Admiralty No 831-B

JOHN EVANISEVICH,

Libelant,

vs.

DIESEL SCREW "BLUE SKY", her tackle,  
apparel, engines, and furniture, etc.,

Respondent.

### FINAL DECREE

This cause having come on regularly to be heard on the pleadings and proofs and having been argued

and submitted by the advocates for the respective parties, and due deliberation having been had, it is now, on motion of David A. Fall, Proctor for libelant,

Ordered, Adjudged and Decreed, that the libelant recover of and from the respondent herein the sum of One Thousand One Hundred Thirty and  $78/100$  (\$1,130.78) Dollars, with interest thereon from the 1st day of March, 1942, at seven (7%) per cent per annum, amounting to \$156.15; and a further sum of Four Hundred Thirty-one (\$431.00) Dollars, with interest thereon from the 12th day of July, 1942, at seven (7%) per cent per annum, amounting to \$43.38 and costs of libelant taxed in the sum of \$59.81, all to the sum of ....., with interest thereon at the rate of seven (7%) per cent per annum until paid, and it is further

Ordered, Adjudged and Decreed that unless this decree be satisfied or an appeal taken therefrom within ten days after service of Notice of Entry of this decree on the claimant [29] or his proctor, the stipulators for costs and value on the part of the claimant of the said Diesel Screw "Blue Sky" cause the engagements of their stipulations to be performed, or show cause within four days after said ten days, or on the first day of jurisdiction thereafter, why executions should not issue against them, their goods, chattels and lands, to satisfy this decree.

Dated: December 20, 1941.

C. E. BEAUMONT,  
United States District Judge.

Not approved as to form as provided in Rule 44,  
for reasons stated in letter to Judge in re findings.

LASHER B. GALLAGHER,  
Proctor for Claimant and Respondent.

[Endorsed]: Judgment entered Feb. 20, 1942.  
Docketed Feb. 20, 1942. Min. Book 25, Page 528.

R. S. ZIMMERMAN,  
Clerk.

By R. B. CLIFTON,  
Deputy.

Interest inserted pursuant to order of 3/4/42.  
Mar. 4, 1942.

R. S. ZIMMERMAN,  
Clerk U. S. District Court,  
Southern District of California.  
By R. B. CLIFTON,  
Deputy.

[Endorsed]: Filed Feb. 20, 1942 [30]



[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable Campbell E. Beaumont, Judge of  
the United States District Court, Southern  
District of California, Central Division:

Respondent Diesel Screw "Blue Sky" and the  
claimants Tom Mason, Marco Cvitanich and Mitchell  
Cvitanich, and each of them, respectfully pray that  
they and each of them may be permitted to take an  
appeal from the final decree entered in the above  
court on the 20th day of February, 1942, to the  
United States Circuit Court of Appeals, for the  
Ninth Circuit, for the reasons specified in the as-  
signment of errors which is filed herewith and your  
petitioners desire to supersede the execution of said  
final decree, and herewith tender a bond in such  
amount as the court may require for such purpose,  
and pray that a supersedeas be allowed as part [31]  
of the allowance of said appeal and the amount of  
the bond fixed so as to operate as a supersedeas.

Dated at Los Angeles, California, this 28th day  
of February, 1942.

LASHER B. GALLAGHER,  
Proctor for Respondent and  
Claimants.

[Endorsed]: Filed Feb. 28, 1942. [32]

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

Now come the respondent Diesel Screw "Blue Sky" and the claimants Tom Mason, Marco Cvitanich and Mitchell Cvitanich and hereby assign the following errors in the above entitled proceedings:

#### I.

The District Court erred in finding that while the libellant was engaged in the service of his said ship he slipped from a ladder and part of the equipment of said ship and the adjoining wharf, severely injuring his left arm and shoulder.

#### II.

The District Court erred in finding that at the time of libellant's injury he was engaged in the service of his ship. [33]

#### III.

The District Court erred in finding that the libellant was injured while he was subject to any call of duty as a member of the crew of the "Blue Sky".

#### IV.

The District Court erred in failing to make any finding whatever with reference to the issue that the libellant was injured while doing his duty and obeying the commands of the master of the vessel.

#### V.

The District Court erred in not finding in accordance with the uncontradicted evidence that the

libellant was not in the service of the ship at the time of his injury.

VI.

The District Court erred in not finding in accordance with the uncontradicted evidence that the libellant, on the day of the accident, had completed any and all possible service to the ship at a time not later than 12 o'clock noon and that for the sole and exclusive pleasure of the libellant he unnecessarily loitered and remained on the vessel until sometime between 1:30 P. M. and 2 P. M. of said day.

VII.

The District Court erred in finding that the libellant was entitled to a 1/17th lay or share of fish caught and sold during the Sardine season subsequent to September 22nd, 1939.

VIII.

The District Court erred in finding that the libellant is entitled to demand and have the ship pay his expenses incurred in and about his support from September 22nd, 1939, to July 12th, 1940. [34]

IX.

The District Court erred in finding that the libellant was entitled to any maintenance whatever for any time whatever.

X.

The District Court erred in finding that there is due the libellant for maintenance, the sum of

\$431.00 with interest at the rate of 7% per annum from July 12th, 1940, or for any sum whatever either with or without interest.

#### XI.

The District Court erred in finding that all and singular or all or singular the premises are true.

#### XII.

The District Court erred in finding that the premises are within the Admiralty jurisdiction of said court.

#### XIII.

The District Court erred in finding that the libellant was entitled to a 1/17 lay or share of the entire proceeds of the Sardine season subsequent to September 22nd, 1939, for the reason that the Sardine season included many voyages and if a seaman is injured while in the service of a vessel he is entitled at most to wages only to the end of a particular voyage and is not entitled to wages to the end of the period of employment which may have been agreed upon and which may include many voyages.

#### XIV.

The District Court erred in finding that the subject of the action was within the Admiralty jurisdiction for the reason that the exclusive remedy of the libellant was within the exclusive jurisdiction of the Industrial Accident Commission of the State of California or the United States Employees' Compensation Commission. [35]

XV.

The District Court erred in concluding that libellant is entitled to a judgment against respondent in the sum of \$1130.78 as wages for the Sardine season ending on or about the 1st day of March, 1940, with interest thereon from said March 1st, 1940, at the rate of 7% per annum and for the additional sum of \$431.00 as maintenance from September 22nd, 1939, to July 12th, 1940, with interest thereon from July 12th, 1940, at the rate of 7% per annum.

XVI.

The District Court erred in not concluding that the libellant is not entitled to recover any sum whatsoever from the respondent "Blue Sky" or from the claimants, or any of them, and in not concluding that the libel should be dismissed with costs to the respondent and claimants.

Dated: Los Angeles, California, this 28th day of February, 1942.

LASHER B. GALLAGHER,  
Proctor for Respondent and  
Claimants.

[Endorsed]: Filed Feb. 28, 1942 [36]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The petition of respondent Diesel Screw "Blue Sky" and claimants Tom Mason, Marco Cvitanich and Mitchell Cvitanich, for an appeal from the final decree entered in the above entitled cause on the 20th day of February, 1942, is hereby granted and the appeal is allowed.

It Is Further Ordered that a certified transcript of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and

It Is Further Ordered that upon petitioners filing a bond in the sum of Three Thousand Five Hundred Dollars (\$3,500.00), with sufficient surety or sureties and conditioned as required by law, the same shall operate as a supersedeas of the decree made and entered in the above cause, and shall suspend and stay all further [37] proceedings in this court until the determination of said appeal to the said United States Circuit Court of Appeals.

Dated at Los Angeles, California, this 28th day of February, 1942.

C. E. BEAUMONT,

United States District Judge.

[Endorsed]: Filed Feb. 28, 1942. [38]

[Title of District Court and Cause.]

BOND ON APPEAL

(Supersedeas and for Costs.)

Know All Men By These Presents:

Whereas, respondent Diesel Screw ‘Blue Sky’ and claimants Tom Mason, Marco Cvitanich and Mitchell Cvitanich have, and each thereof has appealed or is about to appeal from that certain final decree heretofore made and entered in the above entitled cause on February 20th, 1942; and

Whereas, Fireman’s Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California and qualified to act as a surety in this Court, is held and firmly bound unto the libellant herein and unto whom it may concern in the sum of Three Thousand Five Hundred Dollars (\$3,500.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns firmly by these [39] presents and agrees that in case of default or contumacy on the part of the said appellants, Diesel Screw ‘Blue Sky’, Tom Mason, Marco Cvitanich or Mitchell Cvitanich, execution may issue against it, its goods, chattels and lands;

Now, Therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal with effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, this 28th day of February, 1942.

FIREMAN'S FUND INDEMNITY  
COMPANY.

By L. H. SCHWOBEDA,  
Attorney-In-Fact.

Examined and recommended for approval as provided in Rule 13.

LASHER B. GALLAGHER,  
Proctor for Appellants.

I hereby approve the foregoing bond this 28th day of February, 1942.

C. E. BEAUMONT,  
U. S. District Judge [41]

State of California,  
County of Los Angeles—ss.

On this 28th day of February, 1942, before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared L. H. Schwobeda known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of

Fireman's Fund Indemnity Company

and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said



County of Los Angeles the day and year in this certificate first above written.

(Seal) M. E. BEETH,

Notary Public in and for the County of Los Angeles,  
State of California.

My commission expires March 23, 1945 [40]

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[Title of District Court and Cause.]

NOTICE OF FILING BOND ON APPEAL

(Affidavit of Service by Mail—1013a, C. C. P.)

State of California,  
County of Los Angeles—ss.

T. Johnson, being first duly sworn says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business (residence) address is: 458 South Spring St. Los Angeles, California, that on the 6th day of March, 1942, affiant served the within Notice of Filing Bond on Appeal on the libellant in said action, by placing a true copy thereof in an envelope addressed to the proctor of record for said libellant at the office address of said proctor, as follows:\* "David A. Fall, Esq., 333 West Sixth St., San

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\*Here quote from envelope name and address of addressee.

Pedro, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the proctor for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or\*\* (and) there is a regular communication by mail between the place of mailing and the place so addressed.

T. JOHNSON.

Subscribed and sworn to before me this 6th day of March, 1942.

(Seal) ENES SARVELLO,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Feb. 28, 1942. [42]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

The respondent and claimants hereby appeal and each of them appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this court entered herein on the 20th

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\*\*When the letter is addressed to a post office other than "Los Angeles," strike out "and"; when addressed to "Los Angeles," strike out "or."

day of February, 1942, and from each and every part of said decree.

Dated: February 28th, 1942.

LASHER B. GALLAGHER,  
Proctor for Respondent and  
Claimants.

[Endorsed]: Filed Feb. 28, 1942 [43]

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[Title of District Court and Cause.]

NOTICE OF FILING BOND ON APPEAL

To the libellant and to his Proctor David A. Fall,  
Esq:

You and Each of You Will Please Take Notice that the bond on the appeal herein was approved by the Honorable C. E. Beaumont, and was filed in the office of the Clerk of the District Court of the United States, for the Southern District of California, Central Division, on the 28th day of February, 1942, and said bond was executed and given by the Fireman's Fund Indemnity Company, a corporation, authorized to execute surety bonds pursuant to the laws of the State of California and said bond is by reference thereto made a part hereof and a copy of said bond is attached hereto and marked Exhibit "A".

Dated: Los Angeles, California, this 6th day of March, 1942.

LASHER B. GALLAGHER,  
Proctor for Respondent and  
Claimants. [44]

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[Title of District Court and Cause.]

(Affidavit of Service by Mail—1013a, C. C. P.)

State of California,  
County of Los Angeles—ss.

T. Johnson, being first duly sworn says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 458 South Spring St., Los Angeles, California, that on the 6th day of March, 1942, affiant served the within Notice of Filing Bond on Appeal on the Libellant in said action, by placing a true copy thereof in an envelope addressed to the proctor of record for said libellant at the office address of said proctor, as follows:\* "David A. Fall, Esq., 333 West Sixth St., San Pedro, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los An-

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\*Here quote from envelope name and address of addressee.

geles, California, where is located the office of the proctor for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or\*\* (and) there is a regular communication by mail between the place of mailing and the place so addressed.

T. JOHNSON.

Subscribed and sworn to before me this 6th day of March, 1942.

(Seal) ENES SARVELLO,  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Mar. 6, 1942. [45]

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[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the above entitled Court:

I hereby request that the record on appeal in the above entitled cause include the following:

1. Libel
2. Claim of Tom Mason, Marco Cvitanich and Mitchel Cvitanich.

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\*\*When the letter is addressed to a post office other than "Los Angeles," strike out "and"; when addressed to "Los Angeles," strike out "or."

3. Order releasing Diesel Screw "Blue Sky" her tackle, apparel, engines and furniture etc. to claimants Tom Mason, Marco Cvitanich and Mitchell Cvitanich.

4. Answer of respondent and claimants.

5. Opinion and order for judgment filed March 31st, 1941.

6. Findings of fact and conclusions of law.

7. Final decree.

8. Petition for appeal.

9. Assignment of errors. [46]

10. Order allowing appeal.

11. Supersedeas and cost bond.

12. Notice of appeal.

13. Citation and service of citation, copies of petition for appeal, notice of appeal and assignment of errors.

14. Notice of filing bond on appeal and affidavit of service by mail.

15. Testimony of libellant taken in court of:

Dr. J. H. McCracken

Tom Mason

John Evanisevich

Marco Bodich

16. All of libellant's exhibits.

17. Testimony of claimants and respondent taken in court of:

Jack Fabulich

Jerry Marinkovich

Mate Marinkovich

Marko Cvitanich

Tom Mason

Jack Joncich

18. All of respondent's exhibits.

19. Statement of proctor for libellant as shown in Reporter's Transcript, from and including line 1, page 145 to and including line 10, page 146.

20. Stipulations between proctors, from and including line 20, page 173, to and including line 1, page 176 of Reporter's Transcript.

21. All written stipulations which have been or shall be entered into by and between proctors for the respective parties, and orders of the United States District Court based thereon, prior to the completion and transmittal of the record on appeal to the Clerk of the Circuit Court of Appeals for the Ninth Circuit. [47]

22. Praecipe and affidavit of service by mail.

Dated: Los Angeles, California, this 9th day of March, 1942.

LASHER B. GALLAGHER,  
Proctor for Respondent and  
Claimants.

(For Affidavit of Service by Mail: See back of Cover.) [48]

[Title of District Court and Cause.]

(Affidavit of Service by Mail—1013a, C. C. P.)

State of California,  
County of Los Angeles—ss.

T. Johnson, being first duly sworn says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business (residence) address is: 458 South Spring St., Los Angeles, California, that on the 9th day of March, 1942, affiant served the within praecipe on the libellant in said action, by placing a true copy thereof in an envelope addressed to the proctor of record for said libellant at the office address of said proctor, as follows:\* "David A. Fall, Esq., 333 West Sixth St., San Pedro, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the proctor for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or\*\* (and) there is

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\*Here quote from envelope name and address of addressee.

\*\*When the letter is addressed to a post office other than "Los Angeles," strike out "and"; when addressed to "Los Angeles," strike out "or."



a regular communication by mail between the place of mailing and the place so addressed.

T. JOHNSON.

Subscribed and sworn to before me this 9th day of March, 1942.

(Seal) ENES SARVELLO,

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed Mar. 10, 1942. [49]

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LIBELLANT'S EXHIBIT No. 1

14) It is agreed by the parties hereto that when crew members are hired, they are hired for the season and may be discharged only for good cause shown. This is the acknowledged custom in the fishing industry on the Pacific Coast.

(A) It is further agreed that any member of the crew who fails to bring the boat to its home port as provided herein shall pay the owner the sum of \$24.00 who may hire someone in his stead and should the owner sell or charter said boat and not return same to its home port, then in that event the owner agrees to pay the crew transportation in the amount of \$24.00 provided, however, said member or said crew wishes to return to said port. If no additional men are [54] hired to man said boat back to its home port then the amount collected

by said owner shall be equally divided among the members of the crew on said boat. [55]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 58 inclusive contain the Original Citation and full, true and correct copies of: Libel in Rem; Monition and Attachment with Return of Service; Claim of Owners; Order for Release of Vessel; Bond for Release; Answer of Respondent and Claimants; Amendment to Answer; Orders for Judgment; Stipulation as to Value of Maintenance; Findings of Fact and Conclusions of Law; Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond on Appeal; Notice of Appeal; Notice of Filing Bond on Appeal; Praecipe for Apostles on Appeal; and Original Respondent's Exhibit "A" and Libellant's Exhibit No. 1, which together with the reporter's transcript of testimony transmitted herewith constitute the apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$7.55, which amount has been paid to me by Appellants.

Witness my hand and the seal of the said District Court this 21st day of March, A. D. 1942.

[Seal] R. S. ZIMMERMAN,

Clerk.

By: EDMUND L. SMITH,

Deputy.

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[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF TESTIMONY  
AND PROCEEDINGS ON TRIAL.

Appearances:

DAVID A. FALL, Esq.,

For Libelant.

LASHER B. GALLAGHER, Esq.,

For Respondents.

Los Angeles, California, Wednesday,

October 23, 1940.

J. H. McCracken,

a witness called by and on behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Fall:

Q. Your name is Dr. J. H. McCracken?

A. That is correct.

Q. Doctor, you are an M.D., are you?

A. I am.

(Testimony of J. H. McCracken.)

Q. From what school are you a graduate?

A. From the Johns Hopkins in Baltimore.

Q. And you are admitted to practice in the State of California?           A. I am.

Q. How long have you been practicing in the State of California?

A. Approximately 11 years.

Q. In what particular branch, if any, do you specialize?

A. General practice, with about 50 or 60 per cent industrial surgery.

Q. You have had occasion, in your practice, to treat Mr. Evanisevich?

Mr. Gallagher: Just a moment, if your Honor please. [2\*] In view of the fact that this witness is called out of order may I have the benefit of any objections which might possibly be made to the testimony of this witness in the event he were not called out of order? In other words, I believe the testimony will show in this case that a hospital certificate was offered to the libelant, and that he refused it. Under those circumstances I understand the law precludes him from making any claim for either maintenance and cure or for medical expense.

The Court: I don't think that the court can give you any benefit, Mr. Gallagher, that you don't have. If the law gives it to you, you are entitled to it.

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[\*Page numbering appearing at top of page of original Reporter's Transcript.]

(Testimony of J. H. McCracken.)

Mr. Fall: Will you read the question?

(Question read by the reporter.)

A. I have.

Q. When was that, Doctor?

A. I first saw the patient in September of 1939.

Q. What part of September, do you recall?

A. On the 26th.

Q. On the 26th?           A. 9/26/39.

Q. Where did you see him, Doctor?

A. I first saw this patient at my office on that date.

Q. At that time did you make an examination of him?           A. I did.

Q. What did you observe on your examination?

[3]

The Court: What was that date, Doctor, please?

A. That was 9/26/39.

The Court: Will you read the question?

(Question read by the reporter.)

A. The examination revealed considerable swelling and hemorrhage in the soft tissues of the left leg and upper arm, and a diagnosis was made of a severe sprain of the left shoulder.

Q. By Mr. Fall: Did you take the x-rays?

A. I did.

Q. What did the x-rays reveal, if anything?

A. The x-rays were essentially negative, and did not show any fracture into the shoulder joint.

(Testimony of J. H. McCracken.)

Q. Was there any discoloration of the left shoulder or of the arm?           A. There was.

Q. What was the nature of that?

A. The discoloration extended from about the mid-clavicle region, about half way between the shoulder and the neck; extended straight to the shoulder and down the arm to the elbow. The patient has stated——

Mr. Gallagher: We will object to any repetition of what the patient stated, if your Honor please, on the ground that it would be hearsay, and would not prove that any event which may have been repeated to the doctor actually took place or occurred.

[5]

Q. By Mr. Fall: I will ask the doctor what, if any, history did you obtain from the patient at that time?

Mr. Gallagher: That is objected to upon the ground it is immaterial, and would not prove any fact about any of the events therein related to the doctor.

The Court: As I understand, it is not offered for that purpose, it is simply offered for the purpose of laying a foundation for the doctor's conclusion.

Mr. Fall: That is correct, your Honor.

The Court: As to his condition only?

Mr. Fall: Yes.

A. The patient stated that on 9/22, four days previous to coming to my office, as I recall it, it was

(Testimony of J. H. McCracken.)

in going off the ship his foot had slipped and his weight fell against the left shoulder, or in trying to support himself it was necessary for him to hold on with the left arm, and his entire weight went against this shoulder.

Q. Did you then give Mr. Evanisevich any treatment?

Mr. Gallagher: That is objected to, if your Honor please, upon the ground that it is immaterial; no proper foundation laid, in this, that there is no evidence proving, or tending to prove, that any service rendered by Dr. McCracken was not available to the libelant by recourse to the Public Health Service utilities maintained by the United States Government, and in support of that objection I call your attention to the decision in the Calmar case. [5]

(Discussion)

The Court: You may proceed with some other phase.

Mr. Fall: As to this witness, your Honor?

The Court: Until the court gets that volume.

Q. By Mr. Fall: Was the man disabled at the time that you first saw him? A. He was.

Q. Did he tell you that his employment was that of a fisherman, seaman? A. He did.

Q. In your opinion how long was the man totally disabled from continuing his work as a fisherman and seaman, as a result of this condition you found on the 26th day of September, 1939?

(Testimony of J. H. McCracken.)

A. Up until approximately the 15th of July, of 1940.

Q. Had the man at that time completely recovered from his injury?      A. No, he had not.

Q. What was his condition at that time?

A. May I ask, do you mean the middle of July?

Q. The middle of July of 1940, yes.

A. The patient still had a small amount of atrophy of the muscles of the left upper arm and forearm, and also of the scapula. There was also some limitation on abduction or movement of the arm away from the body laterally.

Q. Was there any other limitation? [6]

A. Backward motion of the arm, trying to place the thumb here up on the back, was also restricted.

Q. Have you examined Mr. Evanisevich lately?

A. I have.

Q. When was the last time you examined him?

A. I examined him on yesterday morning.

Q. Was there any improvement in the condition between last July 15th, and yesterday morning?

A. There was.

Q. Will you tell us the condition you found yesterday morning in your examination?

A. There was no atrophy of the left upper arm or forearm at that time, and only a very slight atrophy of the scapula. The motions have improved considerably since the examination in July, and abduction now is carried out to approximately 120 degrees as compared to 160.



(Testimony of J. H. McCracken.)

Q. The improvement in the amount of atrophy indicates what to you, Doctor?

A. It indicates the patient has been using his arm in order to rehabilitate these muscles of this extremity.

Q. As a matter of fact, you instructed him to use the arm as much as he could?      A. I have.

Q. And the fact that the atrophy has been reduced indicates that he has been carrying out your instructions, isn't that so, Doctor? [7]

Mr. Gallagher: That is objected to upon the ground that it calls for surmise and conjecture. It means that he has been taking some exercise, but the doctor can't say that he has followed out all the instructions; the doctor may have instructed him to do a lot of work.

The Court: Read the question.

(Question read by the reporter.)

The Court: Sustained.

Q. By Mr. Fall: If he had not been exercising his arm, and using it, what would you have expected to have found on your examination yesterday, that is between the time of your examination in July and yesterday?

A. Well, we would expect to find a condition similar to that of July, or certainly some atrophy from the disuse of that extremity.

Q. And the change indicates though that he has been using the arm?      A. It does.

(Testimony of J. H. McCracken.)

Q. Doctor, in your opinion, is the limitation of motion that you found the first time permanent?

Mr. Gallagher: That is objected to, if your Honor please, upon the ground that it is immaterial. This is not an action for damages for bodily injury. The only issues, as I understand the pleadings, are a claim to share or lay, and a claim for medical services, and a claim for maintenance, and that decision that I called to your attention would [8] preclude the libelant in this case from having any maintenance at this date in any event, or from this date on. There is no allegation anywhere in this libel that he was injured by reason of any failure on the part of the vessel.

(Discussion)

The Court: The Court will overrule the objection. If the Court is later convinced by a consideration of the law that the evidence should not be considered by it, it will be governed accordingly. You may answer.

Mr. Fall: Will you read the question?

(Question read by the reporter.)

A. I can only state it in this way: That during the last few months there has been considerable improvement, and I think there will continue to be improvement in the way of further use of this arm.

Q. Let us go back to the time when you first saw the man, on the 26th day of September. At that

(Testimony of J. H. McCracken.)

time did you treat the man?           A. I did.

Mr. Gallagher: That was the same question, if your Honor please, that was brought up, and I assume that the object of this testimony is to find out what his services were worth; is that correct, counsel?

Mr. Fall: Both that, and the necessity of showing that he was disabled.

Mr. Gallagher: So far as the object of the evidence [9] deals with the contention that the libelant is entitled to recover for the cost of services, I object to that part of the evidence upon the ground that there is no evidence proving, or tending to prove, that the type of service which was given by the doctor to the libelant was not available to the libelant by recourse to the facilities of the United States Public Health Service, and as the court said in the Calmar case, particularly the part which I read to your Honor, the court takes judicial notice of the fact that these services are available to seamen, and that they are free of charge, and it seems to me that the plaintiff would first have to show that he could not get those services, or that the type of service which he needed was not available to him by recourse to the federal facilities. Otherwise, that language means nothing.

(Discussion)

The Court: Where you gentlemen are so far apart on your ideas of the law, I think the court should give further consideration to the matter, so

(Testimony of J. H. McCracken.)

this evidence will be received with the same understanding as that heretofore referred to, and the court will overrule the objection.

(Question read by the reporter.)

Mr. Gallagher: I believe, if your Honor please, it is necessary to still take exceptions in these admiralty proceedings, because the rules of civil procedure specifically provide they are not available to admiralty matters; so the respondent will save an exception to the ruling just made [10] by the court.

Q. By Mr. Fall: What was the treatment, Doctor?

Mr. Gallagher: That may be subject to the same objection?

The Court: Yes, if it is agreeable to Mr. Fall.

Mr. Fall: Yes.

Mr. Gallagher: And the same exception?

The Court: The same ruling and, of course, your exceptions are allowed, Mr. Gallagher, without any ruling by the court.

Mr. Fall: I will be willing to stipulate, to save Mr. Gallagher's time and the court's time, that in all this particular examination of the doctor, with reference to treatment given, it may be stipulated that an exception was requested and allowed.

A. The treatment consisted of diathermy and partial immobilization by means of a sling.

Q. How often did he return to your office, if he did return, for treatment?

(Testimony of J. H. McCracken.)

A. He was seen approximately every other day for a period of nine or ten months, up until around the 12th of July of this year.

Q. Did the treatment consist of similar treatment as you have described heretofore?

A. The treatment varied a little bit in that at first it was chiefly diathermy, and later, manipulation with massage, but the diathermy was continued over a period of [11] about nine months.

Q. After the 12th day of July did you request him to return?

A. I did. I asked him to come in occasionally to let me observe the extremity, and to see whether or not there had been any improvement.

Q. Since the 12th day of July have you given him any treatment, or did he return merely for observation?

A. He was seen again on 9/11/40, and again yesterday.

Mr. Gallagher: I move to strike out the answer, if your Honor please, on the ground that it is not responsive to the question, and is extremely ambiguous. Counsel asked him whether he gave him treatment, or he returned merely for observation, and the answer was that he was seen on two occasions. That does not tell whether the doctor treated him or looked at him.

Mr. Fall: Maybe I can have the doctor elaborate.

Q. What was done?

(Testimony of J. H. McCracken.)

A. I can answer that by saying he was examined, and not treated at that time.

Q. With reference to the condition that you find at the present time, you say you expected to find improvement. Is there any improvement, or any particular thing, that should be done to give the man the improvement that you believe you should expect?

Mr. Gallagher: That is objected to upon the ground that [12] it has already been asked and answered, if your Honor please. The doctor has said that there should be improvement by the mere further use of the arm, and no other treatment.

The Court: I think that is what he said.

The Witness: Yes.

Mr. Fall: If that is so I will withdraw the question. I did not recall that.

Q. Doctor, what is the amount of your bill for services that you have rendered to Mr. Evanisevich for this particular injury?

Mr. Gallagher: That is objected to upon the ground that it is immaterial, there being no showing yet to support a finding that it was necessary for the libelant to obtain medical care or attention from any private physician, or that the services which were rendered by the doctor were not available to the libelant by recourse to the United States Public Health Service, free of charge.

The Court: That is embodied in your previous objection, I think, Mr. Gallagher.

(Testimony of J. H. McCracken.)

Mr. Gallagher: Very well.

The Court: And the court stated that it would like to give further consideration to the matter, and that if it reaches the conclusion that it is not to be considered the court will not consider it. You may answer.

Mr. Gallagher: May we have an exception? [13]

A. For the services rendered in the treatment of the patient, it amounts to \$347.00.

Q. By Mr. Fall: Doctor, is that the reasonable value of the services so rendered?

A. I think so, yes.

The Court: You say you think so?

A. I will state this: that he has been charged at the rate of \$3.00 per treatment, and in this is included the x-rays that were taken earlier.

The Court: The question is, you should know whether that is the reasonable value.

A. It is reasonable, yes.

Q. By Mr. Fall: Doctor, what kind of diathermy was given to Mr.—

A. It was in the form of heat waves that were applied to the shoulder and arm.

Q. Is that short wave diathermy? A. Yes.

Q. Do you know whether or not the United States Public Health Service at San Pedro has a short wave diathermy set?

Mr. Gallagher: That is objected to as calling for the conclusion and opinion of the witness; no foun-

(Testimony of J. H. McCracken.)

dation laid. He would first have to say whether he had been there during the time the treatment was being given, and had been all through the facilities.

Mr. Fall: I asked him whether he knew or not. He can [14] answer the question one way or the other.

The Court: That would ask him to pass on his own qualifications.

Mr. Fall: It is a preliminary question, to determine whether or not they did have short wave diathermy.

The Court: Read the question.

(Question read by the reporter.)

The Court: You may answer.

A. I do not know.

Mr. Fall: That is all.

Mr. Gallagher: No question, except one: What was the date of the last treatment which you actually gave the libelant here?

A. The last treatment was on 7/12/40—July 12th. [15]



TOM MASON,

a witness called by and on behalf of the libelant, having been first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Tom Mason.

Direct Examination

By Mr. Fall:

Q. Mr. Mason, what is your occupation?

A. Fisherman.

Mr. Fall: Incidentally, I am calling this witness as an adverse witness. He is one of the claimants in this case.

Mr. Gallagher: I challenge the right of counsel to do that. This is an in rem proceeding, and the claimant is not, as such, a party to this action.

Mr. Fall: The claimant verified the answer here, and if he certainly is not a party, I ask that the answer be stricken, because he is not a proper person to verify the answer.

(Discussion)

(An adjournment was taken until 1:30 o'clock p. m. of the same day.) [16]

Afternoon Session

1:30 P. M.

Mr. Fall: I believe counsel has become satisfied that his objection would not be well taken, and I understand he has withdrawn it.

Mr. Gallagher: I cannot find any cases, but I can conclude, this being almost the same as a nega-

(Testimony of Tom Mason.)

tive proceeding, that the same rule should apply.

The Court: The court calls attention to the fact that the vessel is named about three different ways in the pleadings. I think the answer calls it the "Blue Sky."

Mr. Gallagher: It is the "Blue Sky."

Mr. Fall: We will stipulate that it is the "Blue Sky."

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TOM MASON

recalled.

Direct Examination  
resumed.

Q. By Mr. Fall: Mr. Mason, you are the captain of the "Blue Sky," are you?

A. That's right.

Q. And one of the owners thereof?

A. That's right.

Q. Were you captain of the "Blue Sky" during the entire year 1939?           A. I was.

Q. During 1939 did you employ Mr. Evanisevich [17] as one of the crew of the "Blue Sky"?

A. Strictly I don't know how to explain that. Really, he came on there through friendship. When he called me from the other boat, he make a motion like this to me, and I looked at him, and I make a motion again like this; and that's the end of it.

The Court: Read the question, Mr. Dewing.

(Testimony of Tom Mason.)

(Question read by the reporter.)

The Court: Do you understand the question?

A. I do.

The Court: Answer yes or no; then you may explain your answer.

A. O. K. Yes.

The Court: Now, if you have any explanation you may give it.

A. The explanation, with hiring, I didn't definite tell him yes or no; only through mention through friends. A friend was telling him he got an opening here on my boat, if he wants to come to fish for me.

The Court: After that did he work on the boat?

A. He has.

The Court: After you had, whatever this conversation was, whether by word of mouth, or whatever it was, did he come and work on the boat?

A. Yes, about three months after that.

Q. By Mr. Fall: When did he go to work on the boat? [18]

A. April 15.

Q. Then you fished tuna?

The Court: What year? A. 1939.

Q. By Mr. Fall: You employed him for the season, did you, the tuna season?

A. The tuna season, yes.

Q. What did you do when the tuna season finished?

A. We didn't do nothing; stayed idle about ten days.

(Testimony of Tom Mason.)

Q. Then what did you do?

A. Then I call everyone, that we were going to work on the sardine next.

Q. You called the members of your crew together, is that it?

A. I have, and Mr. Evanisevich say he can't come for a day.

Mr. Gallagher: May I have the answer?

(Answer read by the reporter.)

Q. By Mr. Fall: When did that conversation take place?           A. The next day, the 16th.

Q. Pardon?

A. The next day of the conversation, the next day that I called everybody to come down on the boat.

Q. What day did you call everybody to come down to the boat?

A. From about September 21. [19]

Q. September 21?           A. 1939, yes.

Q. When did you come back from Mexico, at the end of your tuna season?

A. I don't remember right now.

Q. You broke down your clutch, didn't you, while you were in Mexico?           A. Yes.

Q. Then you came back and worked fixing the clutch, didn't you?

A. That year it was—I don't remember whether we did that in 1939 or not.

Q. Do you remember that on the morning of the 22nd day of September, of 1939, you had just

(Testimony of Tom Mason.)

repaired the clutch at that time, and you took the boat out to try to see how the clutch was working?

A. No, that was after that.

Q. What did you do on the morning of September 22, 1939?

A. We was working with that.

Q. You were working on it?

A. Yes, hauling the net out of garage down to the wharf.

Q. What did you do the day before?

A. The day before we didn't do anything.

Q. When did you get back from Mexico? [20]

A. I don't remember if I came—from my book I can tell you.

Q. Where is your book?

A. Down at home.

Q. That is in San Pedro?                   A. Yes.

Q. You can have that here for us tomorrow morning, can't you?

A. No. I have stated the day and everything.

Q. Will you bring that book here tomorrow morning?

Mr. Gallagher: I submit, if your Honor please, if we can get through—this is the fishing season, and they came down for this trial only, and they want to leave this afternoon. I can't see what difference it makes as to the day they fixed the clutch. It doesn't seem material enough to keep the whole crew here.

(Testimony of Tom Mason.)

Mr. Fall: These men were working on the boat continuously from the time that the boat got back from Mexico to the time this man was injured; I will show from his own records.

The Court: Proceed.

Q. By Mr. Fall: You hired Mr. Evanisevich to fish for the sardine season, didn't you?

A. Naturally, when he was on the boat, and I didn't sign nobody on; he just continued.

Q. He continued on and it was the intention that he was [21] hired for the sardine season, isn't that correct?

A. According to their statement, yes.

Q. According to what?

A. To their agreement they drew.

Q. You had an agreement with the fishermen, didn't you?

A. You can ask Mr. Evanisevich he made it himself.

The Court: Just answer the question.

A. Yes.

Mr. Gallagher: I think he is talking about the agreement between the union and the boat owners, is that right?      A. That's right.

The Court: Proceed.

Q. By Mr. Fall: You were a member of the Boat Owners Association, were you not?

A. That's right.

Q. Your representative negotiated the agreement with the fishermen in the month of March, 1939?

(Testimony of Tom Mason.)

Mr. Gallagher: That is objected to, if your Honor please, upon the ground that the contract between the Union and the Boat Owners is not applicable in an action of this kind. Title 46, Section 531, the United States Code Annotated, states what kind of an agreement must be made with fishermen, and that agreement must be made in writing; it must be made with the master and must provide for a share of the fish caught.

Mr. Fall: If your Honor please, that section does not [22] limit the right of the boat owners to enter into a contract, and the main purpose, though, for the admission of this agreement, is to show there was a custom in the fishing industry that when a man is employed upon a boat he is employed for the whole season. I think Mr. Mason has so stated though, that the man was employed for the whole season.

The Court: He stated he was employed for the tuna season.           A. That's right.

Q. By Mr. Fall: The tuna season; then for the sardine season, when he called him back, is that correct?

A. No, I did not tell him to come down; I told him to continue working. I did not say I hired him for the season.

Q. What did you call him down there for?

(Testimony of Tom Mason.)

A. I called him down there—usually every one of them told me, if there was anything to be done, or anything like that, to let them know.

Q. You were preparing your boat to go out for the sardine season?           A. Yes.

Q. And you called Mr. Evanisevich down to work on the boat, didn't you?

A. Yes. He did not come, either.

Q. He came the next day, didn't he? He told you he couldn't be down there the first day?

A. That's right.

Q. He came down the next day? [23]

A. Yes, sir, about 10:00 o'clock in the morning.

Q. He worked all day, didn't he?

A. Not quite.

Q. He had worked ten days before that, hadn't he?           A. No.

Q. Are you sure of that?

A. I am positive.

Q. Where were you on the morning of September 22nd, last year?

A. The 22nd, I was at home.

Q. You were at home?           A. Absolutely.

Q. You don't know whether the boat was taken out though to try out the clutch that morning, do you?           A. No, the boat was not out.

Q. You were not there, were you?

A. No, I was not.

Mr. Fall: I ask the answer be stricken, because it shows that he is not competent to testify to that.



(Testimony of Tom Mason.)

The Court: It may go out.

Q. By Mr. Fall: The rest of the men that you called down the morning of the 21st stayed on the whole sardine season, didn't they?

A. That's the same with them, as I did with him; the same thing.

Q. You called them down to work for the season, that's [24] correct, isn't it?

A. Yes, that's correct.

Q. And they worked for the season?

A. Some of them did.

Q. What ones did not?

A. Mr. Evanisevich did not.

Q. That was because he was injured?

A. Not that; because he refused.

Q. He refused?           A. Yes.

Q. When did this happen?

A. After he got injured he promised me he will come; he did not want to, and he refused.

Q. Let us have that again.

The Court: Read the answer.

(Answer read by the reporter.)

Q. By Mr. Fall: After he was injured he did not come down to work on the boat?

A. No, when I called him we were leaving for San Francisco. He stated that he could not go with us, and he told me that he got injured on the boat, which I didn't know a thing about it.

Q. What date was that that you went to San Francisco?           A. The 29th.

(Testimony of Tom Mason.)

Q. On the 29th? A. That's right. [25]

Q. When was the first time you had a conversation with Mr. Evanisevich after the 22nd of September, 1939, if you had any since that time?

A. Well, we had a conversation on the boat during work, and five days, from the 21st to the 26th, he was working four or five days on the boat, on a net; then the last day of the work he asked me if I would allow him to go on a vacation; that he had to go on account of his health, either to the Murrieta Springs; he has to go for a week, or if he doesn't go there he has to go to the Marine Hospital in San Francisco, whether I like it or not.

Q. This was the 26th you say?

A. Along about the 27th, something like that. I couldn't remember exact the date, but it's near there, a day before or after.

Q. You say he worked five days before that?

A. From the 22nd, when I called him down to come on the boat.

Q. He worked on the 22nd, 23rd, 24th, 25th and 26th? A. Yes.

Q. Whereabouts were you on the 23rd of September, last year? A. I was on the boat.

Q. You were on the boat?

A. On the 23rd, yes.

Q. You weren't on the boat on the 23rd, were you? [26]

The Court: What is the answer? A. Yes.

Q. By Mr. Fall: How about the 24th?

(Testimony of Tom Mason.)

A. Yes.

Q. The 24th you went in to Los Angeles, didn't you?  
A. Not me.

Q. One day between the 21st and the 24th you were in Los Angeles, weren't you?  
A. Not me.

Q. Were you on the boat every day between the 21st and the 27th?  
A. Yes.

Q. Pardon?

A. The 22nd and the 27th, yes.

Q. You were on the boat every day?

A. Yes.

Q. Maybe I misunderstood you before. I understood you to say you weren't on the boat on the 22nd.  
A. On the 22nd, yes.

Mr. Gallagher: I object to this upon the ground it is immaterial what counsel's understanding was. It doesn't seem to relate to any material issue.

Mr. Fall: Mr. Reporter, may we have you read the record with reference to the answer to my question?

(Record read by the reporter.)

A. The 22nd; that is right. [27]

Mr. Fall: I want his testimony earlier, as to whether or not he was on the boat on the 22nd.

The Court: I understood him to say he was not there on the 22nd.

Mr. Fall: There is no question about it.

The Witness: That's right.

The Court: You were not there on the 22nd?

(Testimony of Tom Mason.)

A. That's right. He got me mixed up. The 22nd, that's right; I started working on the 23rd.

Q. By Mr. Fall: What makes you say you were on the boat on the 23rd?

Mr. Gallagher: I object to that, if your Honor please, as immaterial.

The Court: Sustained.

Q. By Mr. Fall: Is there anything particularly that makes you recall the 23rd day of September of last year?

Mr. Gallagher: I don't want to keep objecting, your Honor, but I can't see what in the world this has to do with the issues raised by the pleadings here; that is, whether this man was injured in servicing the ship, or whether he is entitled to maintenance and cure and his doctor bills. Whether this man was on the boat on September 23rd can't possibly have anything to do with that.

The Witness: Absolutely not.

The Court: It doesn't appear to the court to be material, but sometimes, Mr. Gallagher, as you know, the court doesn't [28] know what the cross examiner has in mind.

Mr. Fall: I will state right now that the reason is this: Mr. Evanisevich did not work one day after he was injured, on the 22nd, and this man here now says that Mr. Evanisevich was there five days afterwards. I am trying to test the man's memory, which I am certainly entitled to, to determine how he

(Testimony of Tom Mason.)

remembers, or why he remembers, and if he really does remember.

Mr. Gallagher: The witness has testified that the libelant worked about five days just before they left for San Francisco, as I understood his testimony. Now, whether it was the 22nd or the 27th of September, may be a mistake made by the witness.

The Court: He has corrected it so far as the 22nd is concerned. Overruled. You may answer.

A. No, there wasn't anything particularly.

The Court: Read the answer.

(Record read by the reporter.)

Q. By Mr. Fall: What day of the week was the 23rd of September of last year?

A. My God, man, I don't remember. I can't keep all that in my memory.

Q. What date was the 24th—what day of the week?

A. I don't know. We are fishermen; not mind readers.

Q. What time did you go out to the boat on the 24th?

Mr. Gallagher: I object to that, if your Honor please, [29] upon the ground that it is a waste of the time of the court.

The Court: I think so. I am going to limit the cross examination on that point. Are you sure, Mr. Mason, that the libelant, Mr. Evanisevich, was there at work on the 23rd of September?

(Testimony of Tom Mason.)

A. It is in my mind that the evening we went to San Francisco he was.

Q. You don't have any independent recollection of it?      A. No, I haven't.

Q. Just a minute. You stated a few minutes ago that he was there on the 22nd, the 23rd, 24th, 25th and 26th. Now, you have changed your testimony as to the 22nd. You weren't there; you don't know whether he was there or not?

A. Yes; I corrected it. I wasn't there.

Q. Were you there the 23rd?      A. Yes, I was.

Q. Were you there the 24th?

A. That's right.

Q. The 25th and 26th?      A. That's right.

Q. Was he there all of those days, or were you?

A. Yes.

Q. What is your answer?      A. Yes.

Q. By Mr. Fall: Do you have any independent recollection of anything that happened during the time that recalls [30] to your mind at the present time that he was there?

A. He was working alongside of the rest of them, alongside of me; that's all I can say. I don't have any other particular recollection, except as I spoke just a while ago, that he asked me for a vacation, and he said he was going to go ahead, whether I liked it or not; he was going to take it.

Q. You said on one occasion he refused work? When was that that he refused work?

(Testimony of Tom Mason.)

A. He refused work when I called him to come back to work.

Q. What date was that?

A. That was way late in October, the 25th, when we got back from San Francisco.

Q. About a month or so later?

A. That's right.

Q. By Mr. Fall: Did you ever pay Mr. Evanisevich for his work that he did there in September?

A. I have offered to pay him for what he did; for the work he did on the boat, but he refused. I offered him \$1.00 an hour, \$12.00 a day, and he refused it.

Q. When was the next time you had a conversation with Mr. Evanisevich? After you left to go to San Francisco you say he told you he had to go on a vacation?

A. That's the day we put the net on the boat, about the 27th, that he wants to go on a vacation; on the 29th [31] we left for San Francisco.

Q. Did you have a conversation with him then on the 29th?

A. On the 28th, in the evening, I called him up to come down to the boat. He told me "I can't do it." He brought the clothes down there on the boat, and everything, and says for me to go ahead, and "I will be up there in a couple of days."

Mr. Fall: I ask that that be stricken, as being hearsay, what his brother told him.

A. No.

(Testimony of Tom Mason.)

The Court: Who told you?

A. He told me himself; Mr. Evanisevich.

Mr. Fall: I understood he said his brother.

The Court: He said the libelant.

Mr. Fall: I withdraw the request.

Q. Is that all the conversation you had on that occasion?

A. He explained to me how he got hurt.

Q. Yes.

A. And I begged him to come down to the boat. The next morning he came down to my back yard.

Q. What date was that?

A. The 29th. And he swung his arm forth and back, and says "My arm is getting fine. I will be up there in a couple of days." I told him if he could send his son up [32] too, and he says, "My son is working" and he says, "Well, you can put anybody in my place, if you can't get along without me." He says, "I will be up there in a few days. The doctor told me there was nothing wrong with my arm." So that's the end of it. He took his clothes down on the boat. That was the end of the conversation I had with him until I returned.

Q. When you returned, when was that?

A. The 25th of October.

Q. Did you have a conversation with him then?

A. I had.

Q. Where was that?

A. Right in my back yard.



(Testimony of Tom Mason.)

Q. Who else was present?

A. Four or five men; my father-in-law, mother-in-law; we were sitting on the back porch.

Q. What time of the day was it?

A. In the evening, around 5:30.

Q. What was the conversation?

A. He came there and asked me "How is everything?" I asked him "How is your arm getting along?" He said, "Fine. I will be up there", and he promised me he will be up there in a couple of days. He was swinging his arm, and he says, "I can do a lot of work. The only thing, I can't raise my arm clear straight up in the air, but the rest of it I can do it", and he chewed the rag there, and he went [33] off and left me. As soon as he got home he called me on the telephone again. I asked him what was the matter, and he demanded me for the share, and I told him that the crew and myself, when we made the figure, the day we made the figure, that we not give nobody a share, according to the boy that got hurt on the boat before. He got hurt, and he didn't get that share, and Mr. Marinkovich got hurt, and when Mr. Evanisevich was employed on the boat, and he didn't give it to Mr. Marinkovich either.

The Court: We won't take up time on immaterial matters.

Q. By Mr. Fall: Was that all of that conversation?

(Testimony of Tom Mason.)

A. That was all the conversation. I said he was ashamed to ask me for a share. I say the boys pay you for the groceries, and me and the boys, we are going to pay you for your work that you did on the boat; give you a dollar an hour. We put down \$12.00 a day, and we are paying you for your board, when he was employed on the boat, which we did pay him for his board.

The Court: Is that part of the conversation.

A. That is right. And I made the check to him, and offered him \$60.00 for the five days work. Mr. Evanisevich completely refused me. He said, "No, I am not accepting that for the simple reason I want a share." I says, "It is not my fault; the boys decided that way, that they are not going to give it to you, because you didn't give it to Mr. Marinovich. [34]

Q. By Mr. Fall: That was all this conversation on the telephone?      A. Absolutely.

Q. Is that all the conversation?

A. That's all we had for the present time.

Q. You have told us all the conversation you had on the 25th, in your back yard?

A. Yes.

Q. Did you have any conversation with him again after that?      A. One month later again.

Q. When was that?

A. On November 24th.

Q. What day of the week was that?

(Testimony of Tom Mason.)

A. The 24th.

Q. What day of the week was that?

Mr. Gallagher: I object upon the ground that the calendar is the best evidence of that.

A. I don't know what it was.

The Court: He stated he doesn't know.

Mr. Fall: I want to see how his recollection is.

Q. Where did you have the conversation with Mr. Evanisevich?

A. It was usually the telephone. I won't show him no more in my house.

Mr. Fall: I ask that that be stricken, "I won't show [35] him any more in my house."

The Court: It may go out. Tell us what conversation took place on the telephone.

Q. By Mr. Fall: Will you tell us what the conversation was?

A. It's the same conversation that I spoke just a minute ago. He was demanding for the share.

Q. What did you tell him?

A. I told him I could do nothing for him, because the boys, they said they were not going to give him anything, because he didn't give nothing to the other members of the crew.

Q. Was that all the conversation?

A. He was talking something here and there; he needs money, and this and that. I didn't pay attention much to that.

Q. That was all the conversation then?

(Testimony of Tom Mason.)

A. Yes.

Q. When did you next have a conversation with him?

Mr. Gallagher: I submit, your Honor, that these conversations, are not of any probative value, and I submit it is wasting the time of the court.

Mr. Fall: Your Honor, I have something definite in mind with reference to these conversations, in view of some statements counsel has made.

The Court: You may proceed. Don't take any more time [36] than necessary.

Q. By Mr. Fall: I want to know all the conversations that took place after November 24th. What was the next conversation?

A. The next conversation, I don't think we have any conversation any more.

Q. You never had any conversation after that, did you?

A. I don't recall when we have any more.

Q. You didn't have any other conversations with him than you have told us about?

A. Yes, on November 24th he stated if I don't give him the share that he will sue me, and I told him that I knew that; that after the fourth day I arrived in San Francisco the people wrote to some of my members, that Mr. Evanisevich had no intention to go to work; that he was going to sue me for the season, and he was going to take it easy.

Q. Is that all the conversation you had with him on that occasion?

(Testimony of Tom Mason.)

A. Yes; that was the same day, the conversation.

Q. You have told us all of the conversations that you had with Mr. Evanisevich after the 22nd day of September of last year?

A. That's right.

Q. There isn't anything you haven't told us about those conversations?

A. No; that is all I can remember. [37]

Mr. Fall: That is all.

#### Cross Examination

Q. By Mr. Gallagher: (Showing witness document.)

Mr. Fall: I object to the witness being shown that at this time. It is certainly self-serving. He has testified that he had no other conversation, and undoubtedly this is an attempt now to contradict his own testimony.

The Court: If he stated he had no other conversations, would be a proper time, if it is a matter of refreshment of his memory, for his memory to be refreshed.

Mr. Gallagher: That is what I thought.

Q. Mr. *Evanisevich*, I hand you a paper, and ask you if you ever saw that before?

A. I did, and I made it myself.

Q. You made it out yourself?

A. That's right.

Q. What did you do with it when you made it out?

(Testimony of Tom Mason.)

A. I offered it to Mr. Evanisevich.

Mr. Fall: To which we object upon the ground that the proper foundation has not been laid for this conversation.

The Court: He asked him what he did with it.

A. I offered it to Mr. Evanisevich.

Q. By Mr. Gallagher: Where were you when you offered that paper to Mr. Evanisevich?

A. Right in my back yard. [38]

Q. What did Mr. Evanisevich say when you offered him that paper?

A. He say "I don't want it."

Mr. Gallagher: I offer it in evidence, if your Honor please.

Mr. Fall: What date was this?

A. September—

Mr. Fall: Just a minute. Please don't refresh your recollection at the present time.

Mr. Gallagher: I submit counsel has no right to tell the witness what to do and what not to do, if your Honor please. If he has any objection he should address himself to the court.

Mr. Fall: Your Honor, may this particular paper be withdrawn so the witness might testify from his own recollection before he looks at the paper as to what date this was?

The Court: We will proceed in an orderly way. If it is necessary to refresh his recollection, and it is a memorandum made by himself, he may do so.

Mr. Fall: May I have the witness on voir dire?

(Testimony of Tom Mason.)

Mr. Gallagher: I can ask him a few other questions.

Q. Mr. Mason, did you offer this paper to Mr. Evanisevich before you went to San Francisco on the sardine season, or afterwards?

A. Before. When I came back in my yard, and he told me the story he got hurt, I offered him, and he refused, and [39] say he got his private doctor; that he was directed to Dr. McCracken. I say it is foolish to spend the money which would get the medical free, and you could take this and go down to the Marine Hospital. If you can't go down I will take you down to the Marine doctor, and save you the money, but he says he don't want the bond; that he go to a private doctor.

Q. Do you recall the exact date when you left for San Francisco in the "Blue Sky" for the sardine season of 1939?

A. Yes, I recall now; it comes to my mind that it was the 29th we were going to leave, and I had had some business to attend to, and we left the next morning, the 30th.

Q. What time in the morning or night? What time did you leave for San Francisco on September 30, 1939, was it morning or night?

A. It was afternoon, around about 3:00 or 4:00 o'clock.

Q. How long after you offered this hospital certificate to the libelant here did you leave for San Francisco?      A. The next day.

(Testimony of Tom Mason.)

Mr. Fall: To which we object. There is no evidence that it was offered to him before he left for San Francisco.

The Witness: Yes.

Mr. Gallagher: He so testified, your Honor.

A. Yes, sir, it was offered.

The Court: It is overruled. Read the question.

(Question read by the reporter.) [40]

A. I offered the same day that I was going to leave for San Francisco, but I postponed, and we left the next day. I made it the next day, and I told Mr. Evanisevich, when he rejected it, that I was going to leave it in my house, and any time he wants it he can come down and get it.

The Court: Was it the next day you went to San Francisco?

A. That's right.

Mr. Gallagher: I offer that in evidence, if your Honor please.

Mr. Fall: To which we object, your Honor, as being self-serving.

(Discussion.)

The Court: Overruled. Let it be received and marked Respondents' Exhibit A.

Mr. Fall: May we have an exception?

The Court: Yes.

Q. By Mr. Gallagher: I show you what purports to be a check dated September 24, 1939, drawn on the Bank of America, San Francisco. Sate



(Testimony of Tom Mason.)

whether or not that is the check that you gave or offered to Mr. Evanisevich for the five days work?

A. That's right.

Mr. Fall: To which we again object, your Honor. The testimony is that the offer was made by telephone, and again, at most, the check is merely self-serving.

Mr. Gallagher: He said he had a couple of conversations, [41] your Honor.

Mr. Fall: He limited the time to this conversation on the telephone.

Q. By Mr. Gallagher: Where were you when you offered this document, this piece of paper, to Mr. Evanisevich? A. I was right at home.

Q. Where was Mr. Evanisevich?

A. At home, and over the phone we have a conversation, and he flatly refused, and demanded full share.

Q. You did not offer it to him by hand then?

A. No, I have not.

Mr. Gallagher: I will withdraw the offer. That is all.

The Court: Do I understand, so far as this certificate is concerned, you actually handed it to him, or offered it to him, and your handing it to him he refused it?

A. Yes, he refused it, and said he had a private doctor. If you will permit me, your Honor——

The Court: No.

(Testimony of Tom Mason.)

A. O.K.

Mr. Gallagher: I have no other questions.

### Redirect Examination

Q. By Mr. Fall: How much did each member of the crew of the "Blue Sky" earn during the sardine season that commenced in September of 1939?

Mr. Gallagher: That is objected to, if your Honor [42] please, upon the ground that it is immaterial. If the libelant would be entitled to anything at all, he would only be entitled to a share of that one trip or voyage, and not for every trip that was made during the season, not performing any work at all.

(Discussion.)

The Court: I think the court will overrule the objection.

Q. By Mr. Fall: How much did each man of the crew earn for his share for the sardine season, beginning September 1939? I guess it was about October 1st before you started to fish.

A. No, later than that.

The Court: I don't hear you.

A. Later than that. We started October 10th, on account of we had a strike up there for about 15 days.

Q. By Mr. Fall: What was that amount?

A. It was the amount—I have two figures here, one of which shows \$1169.33. That includes with

(Testimony of Tom Mason.)

Mr. Evanisevich the first month he wasn't with us, and we divided ten shares instead of eleven.

Q. \$1169.36?

A. That's on ten shares basis, and on eleven shares basis it is \$1136.07.

Q. That is if Mr. Evanisevich had been with you?

Q. By the Court: That's on the basis of the division of eleven shares? [43]

A. That's right.

Q. The other figure was on the basis of ten shares? A. That's right.

Q. By Mr. Fall: The men actually got \$1169.36?

A. That's right, \$1169.33.

Q. How much did the men get for the first dark? A. \$344.12.

The Court: Does that represent on the basis of a division of ten? A. Ten, that's right.

The Court: \$344.12?

A. That's right.

Q. By Mr. Fall: Did you figure that as the division of eleven too? A. No, we didn't.

Q. On the basis of eleven?

A. I figured afterward what comes to eleven, is \$312.83. That comes into eleven.

The Court: \$312.83?

A. That's right.

Q. By Mr. Fall: How do you arrive at the difference there of \$32.00 on one dark, whereas the difference on the whole season was only \$36.00?

(Testimony of Tom Mason.)

A. I didn't get it.

Q. As I get your figures, the difference between ten and eleven share basis for the season was only \$36.00, or [44] a little bit less than \$36.00—\$35.00 and some cents.

The Court: I think you had better not go into figures. Just find out what the amounts were. It would be a matter of computation. Let me ask you this question: For the total season was it \$11,360.70? Do you have the total?

A. No, I haven't the total for the season. I just have——

The Court: \$11,633.90, that's ten shares.

Q. By Mr. Fall: You are familiar with the terms of the contract that the boat owners entered into with the fishermen in 1939, are you not?

A. There are a few details I can say, which I got in our meeting, but I can't tell you all the details, that I am familiar with them.

Q. I will show you one paragraph here, paragraph 14. Are you familiar with this paragraph?

Mr. Gallagher: Just a minute. I object to that upon the ground that it is immaterial what is in the contract; unless it is in evidence you can't use it as the basis of a question, and get it in backward. There is no offer of the contract yet. If your Honor will look at it you will see that it is not made with the members of the crew; it is a contract made between the union, of which this libelant may or may not have been a member, and the boat owners, but

(Testimony of Tom Mason.)

that contract would not be competent proof of any fact in this case. It doesn't purport to be a contract of [45] employment. In any event, as I understand the rule, you cannot use a portion of a document as the basis of a question unless the document is in evidence.

The Court: I don't think there is any question about it.

Mr. Fall: I will withdraw the question, your Honor.

Q. Mr. Mason, were you a member, in 1939, of the Fishermen's Cooperative Association?

A. Yes.

Q. And did you authorize your representative, Mr. Marko Bodich, to enter into a working agreement with the United Fishermen's Union of the Pacific?

Mr. Gallagher: That is objected to upon the ground that it assumes that somebody named Marko Bodich is his representative. Furthermore, it calls for his conclusion and opinion. There are three claims here, and one man could not possibly underwrite the other two.

The Court: Sustained.

Q. By Mr. Fall: Who is Marko Cvitanich?

A. He is a partner and boat owner.

Q. He is a partner of yours and a boat owner?

A. Yes.

Q. Do you know whether he is a member of the Fishermen's Cooperative Association?

(Testimony of Tom Mason.)

A. No, he is not.

Q. How about Manuel Cvitanich, is he a member of the Fishermen's Cooperative? [46]

A. No, he is not.

Q. You were captain of the "Blue Sky" during 1939, as I understand you to testify?

A. Yes.

Q. You were the one in control of the boat?

A. Yes.

Q. You were the one that hired the crew?

A. Not all the time. Sometimes my partner, when he desires, he brings his friend down.

Q. So you take him on the boat?

A. Naturally, when he is satisfied, I would be too; we agree with each other.

Q. Do you know who Marko Bodich is?

A. All I know Marko Bodich, he is down at the Fisherman's Cooperative Association. I see him down once in a great while, when I go down to the meeting. Most of the time I don't go; very seldom do I go to the meetings.

Q. Did you enter into any negotiations, around the early part of March, of 1939, with the Fishermen's Union of the Pacific—United Fishermen's Union of the Pacific?

A. No, I didn't. We leave that up to our manager. He attends to all of that.

Q. Who is your manager?

A. John Ruzich.

Q. Where is he?

A. He is down in San Pedro. [47]

Q. How do you spell his last name?

(Testimony of Tom Mason.)

A. Ruzich, R-u-z-i-c-h.

Q. You have been a fisherman out of San Pedro, and on this coast, for how long?

A. About 15 years.

Q. Can you tell us whether or not it is the acknowledged custom in the fishing industry on the Pacific Coast, that when crew members are hired for fishing they are hired for the season, and may be discharged only for good cause shown?

A. He might be discharged without good cause.

The Court: Will you read the answer, please?

(Answer read by the reporter.)

Q. By Mr. Fall: Is that custom still in effect?

A. Absolutely. We had that before the union. It was established in 1934, I think, if I recall; I don't know.

Q. I show you a signature here on a document which purports to be a working agreement entered into by you, as captain of the "Blue Sky", and the United Fishermen's Union of the Pacific, and Fishermen's Cooperative Association. Is that your signature?

A. Yes, it is. [48]

## JOHN EVANISEVICH,

the libelant, called as a witness in his own behalf, having been first duly sworn, testified as follows:

## Direct Examination

Q. By Mr. Fall: State your name, please.

A. John Evanisevich.

Q. Mr. Evanisevich, when did you start working as a fisherman on the "Blue Sky"?

A. I started to work—they hire me around the 2nd of March.

Q. March of what year?

A. 1939, because they have to overhaul the engine—

The Court: Just answer the question: When did you start?

A. On the 2nd of March.

The Court: If you will pay attention to the question, Mr. Evanisevich, and just answer the question I think we will save considerable time.

Q. By Mr. Fall: When did the tuna season end?

A. The end of the tuna season?

Q. Yes.

A. It was the tuna season for that time I was with them, to the last part of August.

Q. Of 1939? A. Yes. [51]

Q. What did you do after that?

A. We was in Mexico, and by the end of the tuna, for ourselves, we was broke down in Mexican waters, and then we *can* to Pedro and had about



(Testimony of John Evanisevich.)

16 tons of fish. We stayed there a day, or something like that, and he wants to fix the clutch because he has the clutch broke down, and we came to Pedro on account of that.

Q. Did you work on the boat, after you got back?

A. Yes.

Q. How long did you continue to work on the boat after you returned from Mexico?

A. We was overhauling the clutch.

The Court: Read the question, Mr. Dewing.

(Question read by the reporter.)

A. Oh, around about part of September, until I got injured, almost every day.

Q. By Mr. Fall: Almost every day until you got hurt? A. Almost every day.

Q. Was there a period of ten days that you did not go down to work in the boat?

A. No, sir; a day or two, but not ten days.

Q. Was there an occasion that Mr. Mason called you to come down on the boat, on the 21st day of September, and you told him that you didn't want to come down?

A. The 21st day of September?

Q. Yes [52]

A. I can't tell you exactly the date, but by that time, they was to work before we started to fix the clutch; after we fixed the clutch, we was working on the clutch, and somebody attended the nets for the sardines, and after the nets were dry, we started;

(Testimony of John Evanisevich.)

and we did little things, one day or another day, until the clutch was all right; then after we fixed the clutch——

The Court: Wait a minute. Read the question, Mr. Dewing, and the answer.

(Record read by the reporter.)

The Court: I think you had better direct this witness' attention to particular matters.

Q. By Mr. Fall: Mr. Evanisevich, will you please pay attention to the question, so that you can answer just the question, and don't go into other matters other than just what I ask you. Did Mr. Mason call you to go down to work on the boat, on the 21st day of September, 1939?

A. I couldn't remember if he called me a certain date, but if he called me I always go to the boat, if it is necessary.

Q. Was there any occasion that he called you to go down to the boat that you did not go down to the boat?

A. No, sir, every time he called me I went.

Q. Had you worked on the boat several days before you were hurt?

A. We was hanging the nets before I got hurt, three or [53] four days.

Q. Did you work continuously three or four days, before you got hurt?

A. Continuous, steady, from 4:00 or 5:00 o'clock

(Testimony of John Evanisevich.)

in the morning until late at night. That was the kind of a job he wants to finish——

The Court: You have answered the question.

Q. By Mr. Fall: Was that during the hot weather we had last year?

A. Yes, close to the end of the hot weather. I can't tell you the date.

The Court: Was that just before you were hurt?

A. Before I got hurt.

Q. How many days before you got hurt?

A. We was working four days steady on the nets; with the fish net.

The Court: Very well; you worked steadily four days before you got hurt?

A. Before I got hurt.

Q. By Mr. Fall: On the 22nd of September, 1939, the occasion that you hurt your arm, will you tell us just what you were doing?

A. You want me to tell you the truth, and I am going to tell you. We was hanging the nets, and the day I got hurt, we went on the boat at 8:00 o'clock; then we went across the bay. That's the end of it.

[54]

Q. Please pay attention to the question. Mr. Reporter, will you read the question again?

(Question read by the reporter.)

Mr. Fall: When you hurt your arm?

A. The day when I hurt my arm we went to test the clutch in the morning——

(Testimony of John Evanisevich.)

Q. I will withdraw the question. How did you hurt your arm?

A. How did I hurt my arm? After we was through with the job, it was around noon time, we was going to go home, me and three or four guys there, and the brother of the skipper he went off the boat. I was going after him. Then I went after him, and I kept my foot on the step that goes up to the mast; then I put one foot on the wharf; then I lifted my foot from the step, and I slipped. Then I got hold with this arm, and hung my body on the arm.

Q. What did you have hold of with your left arm?

A. There goes up on the mast one step.

Q. There is a ladder from the side of the boat that goes up to the mast?

A. There are two cables from the deck up to the mast.

Q. Cross-bars?

A. Them pieces of wood for the step.

Q. Were you going to use those steps, before you went and put your foot on the step?

A. I was going to put my foot on the step, even with [55] the wharf, and when I put my foot on the wharf and lifted my left foot off the step, one foot slid off, and I got hold of it with arm right away, so as not to drop and kill myself on the boat.

Q. Did your body drop?

A. My body dropped, yes.

(Testimony of John Evanisevich.)

Q. What happened then?

A. After I dropped, I wasn't able to get on the wharf to protect myself. Then this hand was hanging on my body.

Q. The left one?

A. Yes. The guy was on deck, and I wasn't able to pull myself up on account of I hurt my arm, and the guy was there, and he lifted my left foot and put it on the step; then I got up again; so I was going off of the boat, and the skipper's brother got me and bring me to the wharf.

Q. You were going to lunch, did you say?

Mr. Gallagher: I object to that upon the ground it is leading and suggestive. He did not say anything about lunch.

Mr. Fall: I think that is what he testified. Where were you going?

A. I was going to go home from the boat, because we were through with that morning's work. It was so hot, I didn't want to walk up and down, on account of the weather was so hot. [56]

Q. Were you through for the day?

A. We finished everything we had to do before we leave

Q. Everything had been completed?

A. Everything was completely through.

Q. When did you first go to a doctor?

A. I can't tell you exactly the date, but I guess the doctor knows. It was Monday morning.

(Testimony of John Evanisevich.)

Q. If Monday morning was the 26th day of September, 1939, was that the date?

Mr. Gallagher: I submit, if your Honor please, this will be cumulative. I don't intend to put on any testimony to contradict Dr. McCracken's testimony with reference to when he started to treat him, or how long the treatment lasted.

Q. By Mr. Fall: The 26th was on Tuesday. I will withdraw it, as long as there won't be any question about it. Mr. Evanisevich, at any time after you were injured—

Mr. Gallagher: Just a minute. I didn't say there wouldn't be any question about Dr. McCracken's testimony. I still contend that Dr. McCracken's testimony is immaterial in view of the objections I made about the United States Public Health Service, and I do not want to have Mr. Fall's statement that there is no question about Dr. McCracken's testimony. The same questions remain. All I am saying is that I don't intend to contradict the doctor, with reference [57] to the commencement of the treatment, or the treatment which he gave him, or how long the treatment lasted, or the injuries that he found.

Q. By Mr. Fall: Did Mr. Mason offer you a certificate to go to the United States Public Health Service for treatment?

A. He don't offer me a certificate, but he tells me through the phone if I want to have a blank for going to the Marine Hospital, but I went to Dr. McCracken before, and I never thought—

(Testimony of John Evanisevich.)

The Court: Just answer the question. Read it, and the answer as far as he has gone, please, Mr. Dewing.

(Record read by the reporter.)

The Court: Go ahead.

Q. By Mr. Fall: When was this conversation you had with him on the telephone?

A. He called me up through the phone, that he was going to leave for San Francisco, and I told him——

The Court: When was it?

Mr. Fall: When?

A. I don't know exactly. I can't tell you the date.

Q. Was it before the boat went to San Francisco, after you had finished getting it ready, or had it been up to San Francisco?

The Court: Read the answer as far as he has gone.

(Record read by the reporter.) [58]

A. It was, I believe, before he went to Frisco. Of course, I couldn't remember the date exactly.

Q. By Mr. Fall: Did you ever have any conversation in his back yard, on the 30th day of September, the date the boat had left for San Francisco, wherein he offered you a certificate to go to the Marine Hospital of the United States Public Health Service?

A. No, sir; I never was in the yard before he went to Frisco.

(Testimony of John Evanisevich.)

Q. Did Mr. Mason ever offer you this?

The Court: You are referring to——

Mr. Fall: To Respondent's Exhibit A.

A. He never offered, but on the phone to me, after I told him through the phone——

Q. What did you tell him?

The Court: Did he personally hand that paper to you?

A. No, sir.

Q. Or present it to you in any way?

A. No, sir.

Q. Did you ever see the paper before?

A. No, sir.

Q. By Mr. Fall: How long have you been a fisherman on fishing boats in the United States?

A. For over thirty years.

Q. How old are you?      A. Fifty-two. [59]

Q. You are fifty-two years old now?

A. Yes sir.

Q. When were you fifty-two?

A. In April, 18th.

Q. Have you ever seen that exhibit I have just shown you, Respondent's Exhibit A, before this present time?

A. You mean that blank you showed me here?

Q. Yes.      A. No, sir.

Q. Did you ever have any conversation with Mr. Mason in his back yard, on the 30th day of September, 1939, the day that the boat left for San Francisco?      A. No, sir.



(Testimony of John Evanisevich.)

Q. When was the first time you saw Mr. Mason after you hurt your arm; about how many days afterwards?

A. He went to Frisco, and I happened to come down by his place, and I went in there, and I told him all about my arm and he tried to tell me to come to Frisco. I told him if I could do it I would come; if I don't, I don't know.

Q. What was the condition of your arm about the time the boat left for San Francisco? Could you use it?

A. No, sir.

Q. At any time did you have your arm in a sling?

A. I had it for three months.

Q. When did you first have your arm in a sling?

A. Two days after I got hurt. [60]

Q. Was it in a sling when the boat left for San Francisco?

A. Yes, sir.

Q. Did you work on the boat at any time after your injuries to your arm?

A. No, sir.

Q. Did you have a conversation with Mr. Mason about two days before the boat had left for San Francisco, wherein he asked you to come down to the boat?

A. He told me they were going to leave; I don't know exactly the date. I told him I got hurt. He wasn't on the boat when I got hurt. I told his brother; his brother was there, and I thought they were going to tell him. I don't know.

Q. That is, his brother was on the boat when you got hurt?

A. His brother, yes, sir.

(Testimony of John Evanisevich.)

Q. His brother or brother-in-law?

A. His brother Lamark was on the boat when I got hurt, and two other guys were present there.

Mr. Gallagher: I think he means the brother-in-law, your Honor. I don't want to have any uncertainty in the record. I did not know that Mr. Mason had a brother.

Mr. Fall: Was it his brother-in-law?

A. Brother and brother-in-law.

Q. Was the brother-in-law on the boat? [61]

A. The brother-in-law was on the boat, and his brother, Marko Cvitanich. That is what I heard; I don't know; they called one another brothers.

The Court: Anyway, both the brother and brother-in-law, or brother, were on the boat when you got hurt?

A. His wife's brother was on the boat when I got hurt, and another guy.

Q. By Mr. Fall: Did you ever ask Mr. Mason for a certificate to go to the United States Public Health Service? A. No, sir.

Q. You did have a doctor of your own?

A. I went to the doctor when I got hurt. I did not know right away how much I was hurt, until everything started being black and blue, and then I saw Tom Mason——

Mr. Gallagher: Whatever he told him, your Honor, would be hearsay.

Mr. Fall: Don't tell anything that you told any-

(Testimony of John Evanisevich.)

body other than Tom Mason, or just tell what you did, without telling what the conversation was.

Q. So after a period of time you went to a doctor of your own?      A. Yes, sir; yes, sir.

Q. Did you tell Mr. Mason that you had gone to a doctor?      A. I don't— [62]

Mr. Gallagher: That is objected to on the ground that it is immaterial whether he did or did not.

The Court: Sustained.

Mr. Fall: I don't believe so, your Honor. Counsel brought that out in his examination of Mr. Mason, that this witness had told him that he had gone to a doctor.

Mr. Gallagher: I don't think that is correct, your Honor.

The Court: If that is correct as to the state of the record, I think it is a proper inquiry.

Mr. Fall: My recollection of the testimony was that Mr. Mason said that when he called him about this certificate, that he said that his uncle, or, rather, Mr. Bodich, said that Mr. Mason's uncle had sent him to a doctor.

Q. You say you did tell Mr. Mason, or you did not tell him, that you had gone to Dr. McCracken?

A. I can't remember anything about every day, what I was doing, but some I remember.

The Court: Do you remember whether you told him that? Just answer yes or no.

A. I don't.

The Court: You don't remember, is that it?

(Testimony of John Evanisevich.)

A. I don't remember.

Q. By Mr. Fall: Do you remember having a conversation with Mr. Mason on the telephone, about the day before or the day he left, wherein the subject of this certificate [63] to the hospital was talked about?

Mr. Gallagher: I will object to that, if your Honor please, on the ground that it has already been testified that he did. He went into that fully.

Mr. Fall: I asked about two questions; I didn't go into it fully.

The Court: Read the question, Mr. Dewing.

(Record read by the reporter.)

Q. By Mr. Fall: Not that certificate, but wherein Mr. Mason asked you if you wanted a paper to go to the hospital? A. Yes.

Q. At that time did you have any conversation with Mr. Mason regarding going to Dr. McCracken?

A. No.

Q. Did you ever refuse to go to the United States Public Health Service for treatment?

Mr. Gallagher: That is objected to upon the ground it calls for a conclusion, and it is a self-serving declaration. He has already testified that he was offered a hospital certificate and said he did not want it.

The Court: Sustained.

Q. By Mr. Fall: Did Mr. Mason ever request that you go to the United States Public Health Service?

(Testimony of John Evanisevich.)

Mr. Gallagher: That is objected to on the ground it calls for a conclusion of the witness, and not for the conversation. [64]

The Court: I think, in view of the importance of the matter, that you had better ask for the conversation. Ordinarily the court would not consider that objection good, because we would think that a man would understand the use of the word "request." That is a matter of common understanding, but this witness doesn't understand the English language very well, and it is a matter of importance in the case.

Mr. Gallagher: I would suggest that they use an interpreter, if there is any question as to his understanding of the language, because it is an important part of the case.

The Court: I think, in so far as ordinary language is concerned, he appears to understand it, but he may or may not understand the significance of "request."

Q. By Mr. Fall: Will you tell us all of the conversation, just what you said, and just what Mr. Mason said, when the subject of his saying something about going to the Public Health Service was talked about?

A. I never talked about that with him.

The Court: I don't think he understands just what your question is. You stated that Mr. Mason was talking to you over the telephone, and said something about a certificate so that you could go

(Testimony of John Evanisevich.)

to the Public Health Service. You stated that?

A. Yes. [65]

Q. That is what Mr. Fall asked you about. What did you say, and what did he say?

A. It was through the phone. I can't remember all of what was talked about.

Q. Just what you remember.

A. He was trying to tell me——

Q. Not what he tried to tell you. What did he say?

A. He wants to tell me to give me a blank to go to the hospital.

Q. What did you say?

A. I said to him, "I don't know." I was figuring it won't be necessary to go; like we usually go to Frisco, if there is anything like that to go, I thought maybe my arm won't be so long to bother me.

Q. Did you tell him that?

A. I told him everything about it.

Q. All we want is just what you told him and what he told you.

A. I can't remember everything we talked about.

Q. Whatever you remember; tell what he said, and what you said; because we don't expect you to remember everything; but tell us what did he say and what did you say.

Mr. Fall: Go ahead and answer the question. What did he say and what did you say?

A. He told me through the phone if I want to

(Testimony of John Evanisevich.)

have a blank to go to the hospital. I told him I don't think it [66] is necessary to go to the Marine Hospital, and I says here is the place to go to see what is wrong with my arm.

Q. As to the Marine Hospital, did he tell you where the Marine Hospital was, or what the Marine Hospital was?

A. That is mostly in San Francisco; most seamen go to the Marine Hospital.

Mr. Gallagher: I move to strike the answer as not responsive to the question.

The Court: Let it go out. Do you know where the Marine Hospital is?

A. I know there was one in San Francisco.

Q. Do you know whether there is one anywhere else?

A. They told me—I don't know when he tell me, so I go to the doctor here.

Q. Did Mr. Mason tell you anything about it?

A. When he talked over the telephone he didn't tell me to go any place; he only tells me if I need a blank to go to the hospital.

Q. By Mr. Fall: You didn't go to the hospital?

A. I didn't go to the hospital.

Q. Any hospital?

A. No, no, I just went to Dr. McCracken. That was all I went for.

Q. What is the condition of your arm at the present time?

Mr. Gallagher: That is objected to on the ground [67] it is immaterial, if the court please.

(Testimony of John Evanisevich.)

A. Not very good.

Mr. Gallagher: Dr. McCracken testified that whatever the condition is, it will continue to improve, and no further treatments have been given since July.

The Court: Overruled. You may answer.

Q. By Mr. Fall: What is the condition of your arm now? A. Not so good.

Q. What do you mean by not so good?

A. I can't raise it up.

Q. Stand up. Let us see how far you can raise your arm. Is that as far as you can get your left arm up?

A. That is as far as I can go with it.

Q. How about forward?

The Court: I think for the purpose of the record you had better state the movement.

Mr. Fall: In a horizontal—as he lifted his left arm horizontally it was approximately in a horizontal position, but it didn't go any higher.

The Court: His arm was even with his shoulder?

Mr. Fall: Just about even with his shoulder. His right arm continued up almost vertically. In a forward motion, lifting his arms in front of him, up above his head, I would say that he had just as much motion in the left arm as he had in the right arm.

Q. Bring your arm behind you. [68]

A. That is all I can go with it.

Mr. Fall: The left hand is just about over the



(Testimony of John Evanisevich.)

buttocks on the right side; just about even with the buttocks.

Q. How about the right arm? How far can you bring that up?

The Court: Take your left hand down, and put your right hand around there. Can you raise the other one any higher in the back, the left hand? Is that as high as you can raise it? That is as high as you can go? That is about to his waist in back.

Q. By Mr. Fall: How is your left hand? Do you have as much grip in that as you do in the right?

A. Always since I got hurt, every day I feel a little more grip in it.

Q. It is getting better?

A. It is getting better, yes.

Q. Have you almost as much grip in that as you have in the right hand?

Mr. Gallagher: That is objected to, specifically upon the ground that it is utterly immaterial what his condition is unless he is at the present time receiving medical attention, for this reason: The right to maintenance is co-extensive in time with the necessity to have medical care and attention. That is the reason I make the objection that his present condition is immaterial. This is not an action for damages for personal injury. [69]

(Discussion.)

The Court: Does that refer to medical care?

(Testimony of John Evanisevich.)

Mr. Fall: That is referring to medical care, yes.

The Court: The objection is sustained.

Q. By Mr. Fall: Were you able to return to work as a seaman before July 15th of this year—as a fisherman?

Mr. Gallagher: That is objected to upon the ground that it is calling for his conclusion, and a self-serving declaration.

The Court: Overruled.

A. This year?

Mr. Fall: Yes.

A. I am not able to return back to work yet, by my arm and by my feeling in this shoulder here.

The Court: Read the question and answer.

(Record read by the reporter.)

Mr. Gallagher: I don't think the answer is responsive to the question, your Honor. I move to strike it out.

The Court: It may go out.

Q. By Mr. Fall: Were you able to return to work as a fisherman before July 15th of this year? You can answer that yes or no. A. No.

Mr. Gallagher: I object upon the ground that it calls for his conclusion, and I would like to have the objection in before the answer. [70]

The Court: It is overruled.

Mr. Gallagher: Exception.

Q. By Mr. Fall: Have you received any money at all from Mr. Mason as maintenance?

(Testimony of John Evanisevich.)

A. Not a penny.

Q. Have you received any from him on account of your doctor bill?      A. No, sir.

Q. Have you received anything from him on account of your share in the sardine season, or any part of the sardine season last year?

Mr. Gallagher: That is objected to upon the ground that it is assuming as a fact that he is entitled to a share. I will stipulate with counsel that he has not received five cents since the date of his injury from Mr. Mason for any purpose, for anything.

Mr. Fall: That he hasn't received anything since he finished the tuna season last year?

Mr. Gallagher: I don't know about the tuna season. I am just talking about the sardine season.

Q. By Mr. Fall: Did you receive any money from Mr. Mason after you finished the tuna season last year?

A. I don't receive any money from him except during the tuna season.

Q. Then you haven't received any money from him since the tuna season of last year? [71]

A. Not after the tuna season—since the tuna season. I received the money when I was down in Mexico two or three trips.

Mr. Fall: Maybe you don't understand. After you got through fishing tuna last year—

The Court: Doesn't Mr. Gallagher's statement cover everything here?

(Testimony of John Evanisevich.)

Mr. Fall: There is a period of time there.

The Court: I think his intention was to state that nothing had been paid by reason of these claims; is that correct, Mr. Gallagher?

Mr. Gallagher: Yes.

Mr. Fall: If that is the statement, we will accept the stipulation. That is all.

### Cross Examination

Q. By Mr. Gallagher: Mr. Evanisevich, after you got back from Mexico, on the tuna season, what work did you do on the boat to finish up the tuna season?

A. After we was through with the tuna season—we was not through yet, but we had broke down the——

Q. Just a minute. After you got back to Los Angeles, to San Pedro Harbor, what work did you do as part of the tuna season, on the boat? Just tell us that, without telling us “After we got back” and all of that.

A. Unloading fish, and wash the boat. [72]

Q. Cleaning the nets?

A. We don't have to clean the nets.

Q. Did you clean the nets?

A. We don't have to clean the nets.

The Court: Answer yes or no; did you?

A. No.

Q. By Mr. Gallagher: When did you get back from Mexican waters in 1939?

(Testimony of John Evanisevich.)

A. You mean the last trip?

Q. In 1939, when did you return to San Pedro from Mexico?

Mr. Fall: Which time?

A. We went three or four times.

Mr. Gallagher : The last time.

A. The last time we was broke down.

Mr. Gallagher: I move to strike the answer upon the ground it is not responsive to the question. I asked him when. Do you understand me?

A. You asked me——

Mr. Gallagher: May we have an interpreter, your Honor?

The Court: I don't think it is necessary. Let me ask just a question or two: You went three or four times to Mexico last year? A. Yes.

Q. When did you get back from the last trip?

A. We got back around the last part of August. That [73] is my figure; maybe it is a little bit later, maybe sooner, but around that period.

Q. You said the last part of August?

A. The last part of August.

Q. By Mr. Gallagher: What was the first work you did on the boat preparing for the sardine season? A. The first work——

Q. Not "we."

A. I was helping them to take the clutch off the boat, to put it in a thing to fix it up.

The clutch was taken out of the boat?

A. Yes.

(Testimony of John Evanisevich.)

Q. And taken to a shop? A. Yes.

Q. How long was that before you were hurt?

A. That was around about twenty-five days.

Q. How many days did you work on the boat, taking out the clutch? A. We was working---

Q. Not "we"; you personally.

A. I was working a day or two days until the clutch—after we got the clutch——

Q. Let us get one thing at a time. After you got the clutch out, it was taken up to the shop?

A. It was taken up to the shop.

Q. Did you work on the clutch in the shop? [74]

A. I don't work on the clutch in the shop.

Q. After the clutch was taken out of the boat, did you work on the boat before the clutch was brought back?

A. We was doing a little bit of work; not too much.

Q. Did you personally work on the boat between the time the clutch was taken out and when the clutch was brought back to the boat? Yes or no.

A. Yes.

Q. How many days did you personally work on the boat while the clutch was out of the boat?

A. We was——

Q. How many days were you personally working on the boat between the time the clutch was taken out and the time it was put back in the boat?

A. I can't tell you exactly how many days.

Q. Approximately how many days?

(Testimony of John Evanisevich.)

A. Well, one day we was working, we was working for the clutch, to fix it; another day we was doing a little bit, and another day was the same. And there comes a time——

The Court: I think probably you will save time to have an interpreter.

(P. Radonich was here sworn as interpreter.)

The Court: You may tell him this, if there is a question that calls for a yes or no answer, he should answer it either yes or no; then he may explain the answer if he [75] desires. You tell him that. Very well. You may go ahead.

Q. By Mr. Gallagher: You returned from the last trip to Mexican waters about the end of August, 1929, is that correct?

A. I am not sure about it, but I am guessing.

Q. Do you know whether you got back from Mexico before September 5, 1939? Please answer yes or no.

A. I am not sure about it.

Q. Your best recollection is that you got back about the last day of August, 1939, is that right? Answer yes or no.

A. Yes.

Q. Then, about how long after you got back from Mexico, how many days was it you helped take the clutch out?

A. A couple of days.

Q. Now, on the day of the accident, what work did you do on the boat, you personally?

A. (Without interpreter) I was myself—I was fixing what they call the scoop net.

Q. You personally fixed the scoop net?

(Testimony of John Evanisevich.)

A. (Without interpreter) Yes.

Q. That is a small net?

A. (Without interpreter) It is the scoop net, that is round.

The Court: We have the interpreter. You just answer in your own language. [76]

Q. By Mr. Gallagher: What time did you start to work on the scoop net?

A. We went about eight o'clock in the morning on the boat and we worked about ten or eleven in the morning.

Mr. Gallagher: I move to strike the answer I did not ask the witness what they did. I am asking him what he personally did, if your Honor please.

A. (Without interpreter) That is what I did myself.

Q. You personally?

A. Fixed the scoop net. (Without interpreter.)

Q. Just a minute. Let us get it through the interpreter. You personally worked from eight o'clock till ten or eleven o'clock on the day of the accident, fixing a scoop net? Answer yes or no.

A. Not exactly from eight. We got on the boat at eight o'clock.

Q. You quit working on the fish net, on the scoop net, at 11 o'clock in the morning, did you not? Yes or no.      A. Yes.

Q. Between eleven o'clock in the morning, and twelve o'clock noontime, on the date of your accident, what did you do?      A. We had our lunch.



(Testimony of John Evanisevich.)

Mr. Gallagher: May I ask your Honor to have the interpreter tell the witness, through the interpreter, that when I ask him what he did, to please put his answer in [77] the first person, rather than "we," because I don't know whether the whole crew may have been doing something, or he alone, and I would like to get his personal actions exclusively.

Q. What time did you start to eat your lunch, on the date of the accident?

A. I can't tell exactly the time, the hour, but after we finished the work we went to lunch.

Q. Is it your best recollection that you personally started to eat your lunch about eleven o'clock in the morning on the day of the accident?

A. Not myself, but the whole crew.

Q. Were you included in the crew that started to eat lunch at eleven o'clock in the morning on the day of the accident?

A. I am not positive if it was eleven o'clock.

Q. Well, did you and the rest of the crew start to eat your lunch at approximately eleven o'clock in the morning of the day of the accident?

Mr. Gallagher: If your Honor please, it is apparent this witness is not answering any of these questions just yes or no. Your Honor instructed him to do that, and I ask your Honor again to instruct him to answer that question yes or no.

The Court: I think that is a proper request. Read the question. [78]

(Testimony of John Evanisevich.)

(Question read by the reporter.)

Mr. Gallagher: Tell him to answer that yes or no.      A. Yes.

Q. When you got finished with your lunch, was it approximately twelve o'clock, on the day of the accident? Answer that yes or no.      A. Yes.

Q. What time did you have your accident, approximately?

A. Around 1:30; close to two o'clock.

Q. What did you personally do between the time you finished your lunch and the time you had your accident?

A. As you know, it was very hot at that time and the other ones went away; some of them went away; I and some of our crew stayed in the boat, because it was hot. That is all. [79]

Q. By Mr. Gallagher: Mr. Evanisevich, did you, between the time you finished lunch, on the day of the accident, and the time of the accident, drink any beer at all on board the "Blue Sky"?

A. We had some drinks while we were eating.

Mr. Gallagher: I move to strike the answer out upon the ground that it is not responsive. Drinks might be coffee or tea or water. I asked him about beer.

The Court: It may go out.

Q. By Mr. Gallagher: Will you repeat the question to him? [83]

(Question repeated by the interpreter.)

A. Yes; we had beer, because it was hot.

(Testimony of John Evanisevich.)

Mr. Gallagher: I move to strike out everything except "Yes".

Mr. Fall: No; I think the rest should remain in there.

Mr. Gallagher: Upon the ground that it is not responsive to the question.

The Court: Denied.

Q. By Mr. Gallagher: How many cans of beer did you personally drink that day, before the accident, after 12 o'clock?

Mr. Fall: To which we object as being improper cross-examination, and not within the issues of this case.

The Court: Objection sustained.

Q. By Mr. Gallagher: What did you do between the time you started to eat lunch and the time you had your accident?

A. We stayed on the boat, because it was very hot, and I stayed myself.

Q. What else did you do besides staying on the boat, from the time you started to have your lunch and until the time you had your accident?

A. Nothing.

Q. Just before you had your accident did you have your right foot in the rigging? If the court please, may we have that answered yes or no?

A. (Without the interpreter): I was going up the steps, [84] to go off the boat. What am I going to answer you then?

The Court: That question calls for a yes or no

(Testimony of John Evanisevich.)

answer. You answer it yes or no, if you can, then explain your answer.

A. (Without the interpreter): Excuse me, your Honor, I want to answer everything, but I don't know exactly, because——

The Court: Read the question, Mr. Dewing.

(Question read by the reporter.)

Mr. Gallagher: May I reframe it, your Honor?

The Court: Yes, you may.

Q. By Mr. Gallagher: Just before you fell did you have either foot anywhere on the rigging?

(Without interpreter):

A. I had one of my feet on the wharf, and one on the step, to go off the boat.

Q. Which foot did you have on the wharf?

A. The right one.

Q. Did you have the left foot on the rigging?

A. I had the left foot on the rigging.

Q. What did you have in your hand, if anything?

A. I had my hand here this way.

Q. Did you have a can of anything in either hand?

A. No, sir; I don't have no can on my hand.

Q. Isn't it true that just before you fell you were having an argument with the cook? [85]

A. You want me to tell the story?

Q. Yes or no.

A. I don't have no argument; only talked a little bit.

(Testimony of John Evanisevich.)

Q. You were talking about a political issue, were you not?

A. No, sir; just a couple of words, that was all.

Q. Weren't you and the cook talking about the ham and eggs proposition? Yes or no.

A. We were talking, yes.

Q. About the ham and egg proposition?

A. No, sir.

Q. When you were talking to the cook, didn't you have a can of beer in your hand?

A. No, sir.

Q. You were not drinking from a can of beer while you were up there with one foot on the rigging and one foot on the wharf?

A. No, sir; if you think I was drinking——

The Court: Answer the question.

A. No, sir; I don't have no beer in my hand then.

Q. By Mr. Gallagher: Did you have a can containing beer, in your hand, between the time you finished lunch and the time of your accident?

Mr. Fall: If the court please, to which we again object. I don't see that this is within the issues of this case; this line of questioning certainly is in the nature of a [86] special defense, that the accident occurred by reason of his own misconduct, and not within the issues of the case.

The Court: I think we will not proceed until the court determines whether the motion should be granted to amend.

(Testimony of John Evanisevich.)

Mr. Gallagher: I will state to your Honor that practically the only testimony that is going to be given by any of the witnesses produced by the respondent relates to that issue.

Mr. Fall: What is the ruling on the motion to amend?

The Court: Will you read the observation of the court, Mr. Dewing?

(Record read by the reporter.)

Q. By Mr. Gallagher: Mr. Evanisevich, where were you going at the time you were hurt?

A. I was on my way home when we stopped in town.

Q. As you were going home——

Mr. Fall: May I ask that the answer be stricken, that I was on my way home?

Mr. Gallagher: I have no objection.

The Court: That part may go out.

Q. By Mr. Gallagher: After your accident you went on home, did you? A. Yes.

Q. But you stopped in town on your way home, didn't you? A. Yes. [87]

Mr. Fall: To which we object as being improper cross-examination, not within the issues.

The Court: It has been answered.

Q. By Mr. Gallagher: Where did you stop?

A. Stopped at the Fishermen's Club.

Q. How long did you stay there?

Mr. Fall: To which we object as certainly immaterial as to what he did after he left the boat.

(Testimony of John Evanisevich.)

The Court: Sustained.

Q. By Mr. Gallagher: When did you go to Dr. McCracken?

A. Monday morning, after I got hurt.

Q. What day was the accident?

A. Figuring it my way, it was Thursday afternoon, but I don't know exactly the date. I guess that was it. I think it was Thursday, in the afternoon.

Q. How many times had you been to Dr. McCracken when Mr. Mason told you he would give you a hospital certificate if you wanted one?

A. I don't know.

Q. When Mr. Mason told you he would give you the hospital certificate to the United States Public Health Service, did you tell him you had gone to Dr. McCracken already?

A. Will you repeat that?

(Question read by the reporter.)

A. I think I did, but I am not positive. [88]

Q. Have you done any work for anybody since the day of the accident?      A. No, sir.

Q. Didn't you take the place of your son on a fishing boat, between July 1st, last year, and this date?      A. No, sir.

Q. Have you been on a fishing boat?

A. Yes, sir.

Q. Have you been on a fishing boat while it has been out to sea?

(Testimony of John Evanisevich.)

A. I have been four or five days on the boat, yes, sir.

Q. When was that?

A. That was around a period of—I don't know exactly; I don't remember.

Q. What month?

A. I guess it was May.

Q. What did you do on that fishing boat?

A. Nothing.

Q. What boat was it?

A. The boat "Hawk".

Q. Who is the master?

A. He is in Frisco now.

Q. I didn't ask you where he was. I asked you who he was.

A. Andrew Xitko.

Q. How do you spell that? [89]

A. X-i-t-k-o.

Q. Was your son on that boat at the same time?

A. Yes, sir.

Q. You and your son were both at sea together five days?

A. Yes, sir.

Q. And you swear positively that you did no work of any kind?

A. No, sir. [90]



JACK FABULICH,

called as a witness on behalf of the Respondent,  
being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Gallagher: Mr. Fabulich, what is your business?      A. Fisherman.

Q. Are you presently engaged on the "Blue Sky"?      A. Yes, sir.

Q. Mr. Fabulich, were you on board the vessel "Blue Sky" on the day when Mr. Evanisevich had an accident there?      A. Yes, sir.

Q. Do you remember what was being done that day, on the boat?

A. I know I didn't do nothing.

Q. Were you there when Mr. Evanisevich came aboard?      A. Yes, sir.

Q. Did Mr. Evanisevich do any work on board the boat that day?      A. No.

Q. During the time that Mr. Evanisevich was on board the boat did you see him drinking anything besides water? [100]      A. Yes, sir.

Q. What did you see him drink?

A. He drank beer.

Q. How many bottles or cans?

A. I can't tell exactly, but I know he drank a few.

Mr. Fall: Just a minute. To which I object——

Mr. Gallagher: Just approximately?

The Court: Mr. Dewing, will you read the last two or three questions and answers?

(Testimony of Jack Fabulich.)

(Record read by the reporter.)

Mr. Fall: To which we object—"I can't tell exactly"—everything after that is indefinite.

Mr. Gallagher: I don't mind it being stricken.

The Court: Do you ask that it go out?

Mr. Fall: Yes; the rest of the answer.

The Court: It may go out.

Q. By Mr. Gallagher: Mr. Fabulich, we don't want to know exactly how many, but approximately how many bottles or cans of beer did you see Mr. Evanisevich drink on the day of his accident, before his accident happened?

Mr. Fall: To which we object as being immaterial. That might have been ten hours before. I don't believe the question is material.

The Court: Objection overruled.

Q. By Mr. Gallagher: Do you remember the question?

A. Yes. He drank a few bottles; I can't tell you [101] exactly, but at least four or five beers, anyhow, as much as I could see.

Q. Do you remember how the boat was moored to the dock that day? Was it portside or starboard side to the dock? A. Port side.

Q. Did you see Mr. Evanisevich at the time of this accident? A. Yes, sir.

Q. What was he doing?

A. Well, he climbed to jump on the dock, so we climbed about two or three feet on the rigging.

(Testimony of Jack Fabulich.)

The Court: Will you read the answer, please?

(Answer read by the reporter.)

A. Then he put one foot on the dock and the other foot he still kept on the rigging.

Q. By Mr. Gallagher: Where was this rigging with reference to the length of the boat forward, amidships to aft? A. What do you mean?

Q. Where was the rigging located? Was it up at the bow, at the stern, or in the middle of the boat?

A. The rigging, it's on the middle of the boat, anyhow.

Q. When he climbed up there on the rigging he had one foot on the rigging, and one foot on the dock, and what did he do?

A. Then he stood there for two or three minutes. [102]

Q. Did he have anything in either hand during that time he was standing there?

Mr. Fall: To which we object as leading and suggestive.

Mr. Gallagher: I submit it is not leading.

The Court: Will you read the question, please?

(Question read by the reporter.)

The Court: I don't believe it is leading, Mr. Fall. Overruled.

A. Yes, sir; he had a can of beer.

Q. By Mr. Gallagher: Did he do anything with the can of beer except hold it in his hand?

(Testimony of Jack Fabulich.)

A. He was holding it in his hand, yes, sir.

Q. Was he talking to anybody?

A. He was talking to the cook. The cook was in the kitchen.

Q. Will you state what he was doing with both of his hands during the time he was standing there with one foot on the rigging and one foot on the dock?

A. He was just standing like that, holding the can of beer in his hand, and talking to the cook, you know.

Mr. Fall: Indicating his left hand.

A. He just stayed plain with that, holding with either hand—just plain; not holding anything by the rigging.

Mr. Gallagher: You mean he wasn't holding onto the rigging?

A. I mean he was plain, like this, holding the beer in [103] one hand and the other hand like that.

Mr. Fall: Also indicating the beer was in his left hand.

Mr. Gallagher: Are you right-handed or left-handed?

A. I guess he had the beer in the right hand.

Mr. Gallagher: I ask that that be stricken.

The Court: It may go out.

A. Yes; he had the beer in the right hand.

Q. By Mr. Gallagher: Was there any other way to get from the boat onto the deck?

(Testimony of Jack Fabulich.)

A. Yes; he could have gone on the bow.

Q. Where was the bow with reference to the level of the deck?

A. The bow was just about the level with the deck.

Q. Do you remember what Mr. Evanisevich and the cook were talking about?           A. I remember.

Q. What?

A. They were talking about——

Mr. Fall: To which we object as incompetent, irrelevant and immaterial, what they were talking about.

Mr. Gallagher: I think it would go to show whether he was engaged in any duty he owed to the ship. He alleges in his libel that he was engaged in performing a command of the master at the time he fell.

The Court: Sustained. [104]

Mr. Gallagher: We take an exception, and offer to prove the following: That the entire subject of the conversation between libelant and the cook related to a particular issue commonly known as the Ham and Eggs Plan, which was then about to be submitted to the voters of the State of California, and that it has nothing to do with anything pertaining to the ship.

Q. Mr. Fabulich, how long had you known Mr. Evanisevich before the date of his accident?

A. Well, I know Mr. Evanisevich for the last few years.

(Testimony of Jack Fabulich.)

Q. Had you had occasion to see him quite often?

A. I used to see him quite often, yes, but I never had anything like friendship with him, or anything; just to say hello, hello to each other.

Q. How long had you worked with him on the same boat?

A. He was on the same boat for just the tuna season; that is, two or three or four months, I guess.

Q. During the time that you were on the same boat with him, did you live on board the vessel?

A. Yes. [105]

Q. Mr. Fabulich, how did you happen to go on board that day, the day of the accident?

A. Do you mean me?

Q. Yes.

A. Well, I still lived on the boat.

Q. You lived on the boat?

A. Yes; I sleep on the boat; I live on the boat; that's my house.

Q. Did Mr. Evanisevich live on board the vessel at that time?      A. No.

#### Cross Examination

Q. By Mr. Fall: How much beer was on board the boat that morning Mr. Evanisevich was injured?

A. I believe we had two cases of beer that day on board.

Q. Early in the morning was that beer there?

(Testimony of Jack Fabulich.)

A. Early in the morning, yes.

Q. It was brought down that day, wasn't it?

[107]

A. The cook brought it down, yes.

Q. There wasn't any beer on board the boat before the cook brought the beer on, was there?

A. No.

Q. So that all that was on board was what the cook brought?      A. Yes, sir.

Q. How many men were there on the boat that day?

A. Well, I believe eight was on the boat.

Q. As a matter of fact, there were eleven men on board the boat, weren't they—all of the crew? I will withdraw that. All of the crew was on board the boat, with the exception of the skipper, that is correct?      A. Yes.

Q. And they all had lunch on board the boat?

A. Yes.

Q. In addition to the crew, Mr. Cvitanich was on board?      A. Yes.

Q. So that made eleven on board the boat that day?

A. No; I told you eight men were on board. Three was missing.

Q. Who was missing?

A. The skipper and two others.

Q. Who were the other two that were missing?

A. Two.

(Testimony of Jack Fabulich.)

Q. What are their names? [108]

A. By golly, I can't give you the names.

The Court: Read the answer.

(Answer read by the reporter.)

Q. By Mr. Fall: Was Dino Bothidich on board?

A. Yes.

Q. Marko Marinkovich was on board?

A. Yes.

Q. Jack Vitolich was on board, wasn't he?

A. No; he was not on board.

Q. Where was Jack Vitolich, if you know?

Mr. Gallagher: I object to that upon the ground that it calls for his imagination. If he wasn't on board, he can't possibly say where he was.

Mr. Fall: He might have been around the dock there.

The Court: Did you see him there?

A. No.

Q. By Mr. Fall: How about John Certvich?

A. He was on board.

Mr. Gallagher: What time, counsel?

Mr. Fall: On that day.

Mr. Gallagher: I think it makes a difference if the witness is thinking about the time of the accident. Counsel is thinking about 7 or 8 o'clock in the morning.

The Court: Under the state of the evidence I think the objection should be overruled.

Q. By Mr. Fall: When you said Jack Vitolich



(Testimony of Jack Fabulich.)

was not there [109] you meant at the time the injury happened?      A. No, sir.

Q. He was there before that, wasn't he?

A. No; that day he never showed up on the boat.

Q. He never showed up all day?      A. No.

Q. John Vanich was there, is that correct?

Mr. Gallagher: I didn't hear any answer to the question.

Q. You said yes?

A. John Vanich, yes, he was on board.

Q. How many cans of beer did you have to drink that day?      A. Well, I don't know.

Q. About how many?

A. Two or three beer.

Q. As a matter of fact, you might have had about four, didn't you?      A. Put it at four.

Q. Four would be about what you had?

A. Yes.

Q. It was a hot day, wasn't it?

A. A hot day, yes.

Q. No one was drinking any wine that day, were they?      A. No, sir.

Q. When did you have your first can of beer, kind of early in the morning? [110]

A. I never used to ever drink before I ate my meal.

Q. You did not have anything before you ate your meal?      A. No.

(Testimony of Jack Fabulich.)

Q. But between the time you had your meal and the time that Mr. Evanisevich was injured you had about four beers? A. Yes.

Q. How many beers were left there in the galley after Mr. Evanisevich was injured?

A. I don't know. I can't tell you that.

Q. There were some cans left, weren't there?

A. Maybe, but I don't remember.

Q. Didn't you later on, in the afternoon, have another can of beer after Mr. Evanisevich had been injured?

A. I don't think there was left any beer after everybody went to the boat.

Q. You say you don't remember, is that correct, that you don't remember whether there was any beer?

A. There wasn't any beer any more after everybody left the boat, because it was all gone.

Q. You did have beer out of the galley, after Mr. Evanisevich was injured, didn't you?

A. No; I don't think there was any more beer on the boat when he left.

Q. You are not sure, though?

A. I am not sure, but—— [111]

Q. Whereabouts in the rigging did Mr. Evanisevich have his foot?

A. About three feet from the deck.

Q. What did he have it on?

A. On the rigging, you mean?

The Court: What part of the rigging?

(Testimony of Jack Fabulich.)

A. The port side.

Q. By Mr. Fall: Did he have it on a step?

A. He have a foot on the step, on the rigging, on the [113] step, yes.

Q. How far was it from the step that he had his foot on to the edge of the dock?

A. It could be about two feet, I believe.

Q. About two feet? You said he stayed there for about two or three minutes? A. Yes, sir.

Q. Just before he went up the ladder Mate Marinovich went up the rigging and stepped over to the dock, didn't he? A. Yes.

Q. He went up the same way Mr. Evanisevich went up? A. Yes. [114]

Q. What did Mr. Evanisevich have on the step in the rigging? A. The left foot.

Q. He had his left foot? A. Yes, sir.

Q. Will you tell us just exactly what happened after Mr. Evanisevich had been standing up there two or three minutes?

A. Then for some reason the boat started to move out to sea.

Q. The boat started to move. Then what happened?

A. Then his right foot slipped from the dock, and I was under him right on the *desk*, and he started to fall down, you see, and at the same time I grabbed him by his leg, around here.

Q. What happened to his arms?

(Testimony of Jack Fabulich.)

A. At the same time he grabbed himself with the left hand at the rigging.

Q. He grabbed the rigging with his left hand?

A. Yes.

Q. Then you put your foot over on one of the steps of the rigging, didn't you? A. Yes, sir.

Q. Then he climbed up and went on the boat, didn't he?

A. Then he climbed up again, and I jumped on the dock.

The Court: Will you read the last few questions and answers? [115]

(Record read by the reporter.)

Q. By Mr. Fall: As a matter of fact, Mr. Evanisevich fell, his legs dropped down, and they were lying alongside of the steps of the rigging, weren't they? A. Yes.

Q. When you said you grabbed his legs, you meant you pushed his legs over so that he could get his foot on the step of the rigging?

A. He turned back again to the rigging.

Q. He was hanging there with one arm, wasn't he? A. With one arm, yes.

Q. Whereabouts in the rigging did Mr. Evanisevich grab with his left hand?

A. Do you mean that there was anything on the rigging?

Q. What part of the rigging did he grab?

A. It is the port side of the boat.

(Testimony of Jack Fabulich.)

Q. Did he grab a step of the rigging, or did he grab an upright?

A. He grabbed the step of the rigging, yes, sir.

Q. What did he do with his right hand?

A. Nothing.

The Court: Is that step of the rigging wooden, or is it rope?

A. Wood.

Q. By Mr. Fall: What step of the rigging did he grab?

A. The third step or the fourth, something like that. [116] I can't tell you exactly.

Q. His body dropped down how far from where he was standing? Say he was about the height of the railing here, with relation to his shoulders, did he grab down below as he fell, or did he grab up above his shoulder?

A. He grabbed up above, you know. He was standing—just against his body, you see.

Q. You say the place in the rigging he grabbed was just opposite his body?

A. Maybe one step below his body.

Q. When you say his body, what do you refer to, the shoulders or the head?

The Court: Just stand up and show.

Q. By Mr. Fall: What do you refer to when you say one step below his body? What portion of his body?

A. Something like that, you see.

(Testimony of Jack Fabulich.)

The Court: About even with his left shoulder?

A. Yes.

Q. By Mr. Fall: It was one step below that he grabbed?

A. Yes.

Q. How far apart are the steps?

A. About two feet; something like that, I guess. I don't know exactly.

Q. What did he do with his right hand when he fell?

A. Nothing.

Q. You were standing under him? [117]

A. At the same time I grabbed him, so he did not have no other chance to use the other hand.

Q. Didn't some of the rotten wood or piling there come down as a result of his grabbing hold of the piling with his other hand?

A. No, sir.

Mr. Gallagher: I object to that upon the ground that it assumes there was rotten wood or piling.

The Court: He has answered; he said no.

A. No.

Q. By Mr. Fall: What happened to the can of beer?

A. It fell out of his hand.

Q. It did not fall on the boat, did it?

A. No.

Q. You don't know what happened to it, do you?

A. No.

Q. As a matter of fact, he did not have a can of beer in his hand, did he?

A. Yes, he had a can of beer.

(Testimony of Jack Fabulich.)

Q. When did you see him first have that can of beer in his hand?

A. I took the can of beer in the kitchen, and he wanted to go home, and at the same time I stopped there, and he still was drinking that beer, and standing, as I told you before.

Q. He didn't fall off of this place up there before he [118] had this occasion when he slipped, did he?

A. He had still that can of beer in his hand.

Mr. Fall: I ask that the answer be stricken as not responsive.

The Court: It may go out.

Mr. Fall: I think the question isn't relevant. I will reframe the question.

Q. Did he fall at any time before the occasion you have referred to?

A. Not that I know.

Q. When did he have his first can of beer, that you saw him have?

A. Well, it was a hot day, so he was drinking. I never watched everybody, what they were doing on the boat.

Q. Was it early in the morning?

A. Well, maybe it was nine or ten o'clock; something like that.

Q. When was the next can that you saw him have—what time?

A. I don't know. I never watched, I told you before; I never watch everybody drinking. I saw that he was drinking quite a few beers.

(Testimony of Jack Fabulich.)

Q. I want to know when you saw him drinking any beer, that you have referred to, about nine or ten o'clock; that is, when was the next time?

A. After he was drinking, one after the other, every [119] time he get thirsty, he took the beer, and drank it up.

Q. Thirsty from what?

A. It was kind of a hot day.

Q. It was a hot day?           A. Yes.

Q. Was he working out there in the sun?

A. No, he wasn't doing nothing.

Q. What were you doing?

A. I live on——

Q. What was he doing? I withdraw that question. What was he doing?           A. Nothing.

Q. Where was he?

A. He was on the boat.

Q. Whereabouts on the boat?

A. Nobody, I tell you, I can tell.

Mr. Fall: I ask that that be stricken as not responsive.

The Court: It may go out.

Mr. Fall: Answer the question.

(Question read by the reporter.)

A. He wasn't doing anything on the boat.

Mr. Fall: I ask that that be stricken as not responsive.

Mr. Gallagher: That assumes that he was on one spot all day.



(Testimony of Jack Fabulich.)

The Court: Proceed. You may answer. Read the question.

(Question read by the reporter.) [120]

A. Well, walking around the boat, just doing nothing.

The Court: Read the answer, please.

(Answer read by the reporter.)

Q. By Mr. Fall: When did he start walking around the boat?

A. In the kitchen, he take a can of beer.

Q. When? A. And he came out—

Mr. Fall: I ask that the answer be stricken.

The Court: The answer may go out. Mr. Fall, the court is going to limit the cross examination on this point, very shortly.

Mr. Fall: I will withdraw the last question.

Q. The boat was taken out and run to test out the clutch that day, wasn't it?

A. Yes; the boat was in Fish Harbor, in the machine shop.

Q. It went over there, and then came back?

A. Yes, sir.

Q. When you left to go over to Fish Harbor the boat was headed in, wasn't it, at the wharf, with the bow toward the wharf?

A. I don't remember.

Mr. Gallagher: That is objected to on the ground it is immaterial, if your Honor please.

The Court: It would appear to be.

Mr. Fall: I will withdraw that. I think prob-

(Testimony of Jack Fabulich.)

ably that [121] will come out later on in some other matter.

Q. What did Mr. Evanisevich do when the boat went over to Fish Harbor, to the machine shop?

A. Nothing.

Q. Did you talk with Mr. Mason at any time that day?

A. I hadn't seen Mr. Mason that day.

Q. You didn't see him that day?

A. He wasn't on the boat that day.

Q. He came on later on that day, on the boat, didn't he?

A. I don't remember. I don't think he was on that day, on the boat.

Q. What did you do that day?

Mr. Gallagher: I object to that as immaterial, not cross examination.

The Court: It seems not to me.

Mr. Fall: In view of the previous testimony of Mr. Mason I will withdraw it.

Q. At the time Mr. Evanisevich was injured, all the work in preparing the boat had been completed, had it not? A. Yes.

The Court: What was the purpose of testing out the clutch? Was it going on a trip the next day, to San Francisco?

A. No; we had after so many days just waiting to go fishing, but everything was done on the boat; there was nothing to do any more on the boat. [122]

The Court: You said that you made a trip over

(Testimony of Jack Fabulich.)

some place for the purpose of testing the clutch.

A. Yes, but that was out just to try the engine; they ran the engine; that was their job. [123]

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JERRY MARINKOVICH,

a witness called by and on behalf of the respondent, having been first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Gallagher: (With interpreter) What is your business? A. Fisherman.

Q. Are you related to Mr. Mason? A. No.

Q. How long have you been a fisherman?

A. Thirty-eight months with him.

Q. Altogether, I mean. How long have you been a fisherman working on fishing boats?

A. About fourteen years.

Q. (Without interpreter) Were you the cook on the "Blue [125] Sky" at the time Mr. Evanisevich had his accident? A. Yes.

Mr. Gallagher: Maybe I can do all right. He seems to.

Q. Did Mr. Evanisevich do any work on board the boat the day of the accident? A. No.

Mr. Fall: To which we object as leading and suggestive—did he do any work?

Mr. Gallagher: I am trying my best to save time.

Mr. Fall: Ask what he did.

(Testimony of Jerry Marinkovich.)

The Court: It may be a little suggestive. It has been answered, however.

Q. By Mr. Gallagher: Mr. Marinkovich, do you remember when Mr. Evanisevich came on board the boat on the day of the accident; that is, what day he came on board?

A. (With interpreter) I believe about eight o'clock.

Q. What did he do from the time he came on board up to the time of his accident?

A. He was walking up and down on the boat, and talking. I don't know anything else.

Q. Did anybody repair a net on board the boat that day?

A. Yes; Matey Marinkovich made a new bladder.

Q. A new what—a scoop?

A. A new scoop.

Q. Did anybody else on the boat, excepting Matey Marinkovich, have anything to do with that scoop? [126]

A. Marinkovich and two helpers were working on it, and I was cooking.

Q. Who were the helpers on the scoop net?

A. Nobody; just a man; the two which were working down in the machine.

Q. That isn't what I asked you. Who was working on the scoop net?

Mr. Fall: Just a minute. May I interrupt, your Honor? I understand that the interpreter is

(Testimony of Jerry Marinkovich.)

not relating the questions to the witness as they are asked.

The Court: I think that is unfortunate, because we should have an interpreter who will repeat the questions exactly.

The Interpreter: These people mix the English language with their own, and the English version of their expressions are difficult; even the English word is not pronounced, so it is difficult for the interpreter to understand.

The Court: I understand that, particularly where they speak enough English so that ordinarily they get along, there is a tendency to use some English with their own language.

The Interpreter: Yes; even if the English were pronounced properly, a person would understand them better.

The Court: I think you had better be safe. We will try and take this without the interpreter.

(Without interpreter.)

Q. By Mr. Gallagher: Mr. Marinkovich, do you know Mr. [127] Evanisevich, sitting here?

A. Yes.

Q. Did Mr. Evanisevich work on the scoop net at all? A. No. That day?

Q. Not that day? A. No.

Q. Did you have anything to do with bringing beer on the vessel?

A. I bring beer for the gang.

Q. You brought beer for the gang?

(Testimony of Jerry Marinkovich.)

A. Yes.

Q. How much beer did you bring on board, on the day of the accident?

A. I think I bring two cases.

Q. Was there any beer on board before you brought the two cases? A. No.

Q. Did Mr. Evanisevich drink any beer before lunch time? A. Before lunch?

Q. Yes. A. Yes.

The Court: Did you say that was before lunch? Did he drink before lunch, or not?

A. Before lunch.

Q. By Mr. Gallagher: Did you have any conversation with Mr. Evanisevich about this drinking beer, before lunch? [128] A. No.

Q. No talk?

A. Yes, we talked, you see——

Q. What did you talk to him about beer before lunch?

A. I say not to drink too much beer, because we no got plenty for all day, because three engineers were on the engine.

Q. There were three engineers working on the engine? A. Yes.

Q. One man working on the scoop net?

A. Yes, he work about two hours.

Q. He worked about two hours? A. Yes.

Q. Was it all finished then? A. No.

Q. When was the scoop net finished? Who finished the scoop net?

(Testimony of Jerry Marinkovich.)

A. We finished after while, when we went to San Francisco.

Q. When did Mr. Evanisevich start to drink beer that day?      A. Oh, about ten o'clock.

Q. Was it bottle beer or can beer?

A. Can beer.

Q. What kind of beer?

A. I am not sure.

Q. How many cans of beer did you see Mr. Evanisevich take that day, before the accident?

[129]

A. Oh, about six or seven.

Q. Did you see the accident? Did you see him fall?

A. No; just was hanging with his hands.

Q. Did you see him before he fell?

A. Yes.

Q. Where was he just before he fell?

A. On the step.

Q. From the step to the deck?

A. No, the railing—what you call on the boat, the mast——

Q. The rigging?      A. Yes.

Q. What was he doing in the rigging?

A. He was talking to me. [130]

Q. Tell the court how Mr. Evanisevich was standing. Where did he have both feet, just before the accident?

A. One foot on the step where is going for the mast.

(Testimony of Jerry Marinkovich.)

Q. Up on the mast?

A. Yes. And another, he has in this hand got the beer.

Q. In his right hand?           A. That's right.

The Court: The right hand?

A. Yes, and the face he got to the stern.

Q. By Mr. Gallagher: He faced which way?

A. In the stern, in back.

Q. He was facing the stern of the boat?

A. Yes. [132]

#### Cross Examination

Q. Where did he have his right foot, before he fell?

A. This foot he got on the wharf, and this he got in the railing.

The Court: That foot was in the rigging?

A. In the rigging, yes.

Q. By Mr. Fall: You have talked this matter over with the other men out in the hall, that have been called as witnesses, who came down from San Francisco, haven't you?

A. I can't understanding anything.

Q. We will take it apart. You came down from San Francisco with other members of the "Blue Sky", didn't you?           A. Yes.

Q. You are still on the "Blue Sky"?

A. No.

Q. Did you come down with Jack Fabulich?

A. Yes. [134]



(Testimony of Jerry Marinkovich.)

Q. He is on the "Blue Sky"? A. Yes.

Q. You came down with somebody who was on the "Blue Sky"? A. Yes.

Q. How did you come down; on the train, bus, or what? A. Train.

Q. Did you talk about this case?

A. No, nothing.

Q. You haven't talked with anyone about this case? A. No.

Q. You never talked with Mr. Gallagher here about this case, this man here?

A. That man, he no be on the train.

Q. Did you ever talk with him?

The Court: Just a moment. There must not be any outward reaction to the testimony of any of these witnesses by any of those in the courtroom. If anyone disturbs the proceedings they will have to leave the courtroom.

Q. By Mr. Fall: Have you ever talked with Mr. Gallagher here about what you were going to testify to today? A. No.

Q. Did you ever talk with Mr. Roberts, sitting next to him, about what you were going to testify to today? A. No.

Q. Did you ever talk with Tom Mason about what you were going to testify to today? [135]

A. A few days he say to me, got to be in court; that is all he talk; we got to be in court on the 23rd.

(Testimony of Jerry Marinkovich.)

Q. Did some one serve a subpoena on you, to be here?

Mr. Gallagher: The best evidence of that would be the marshal's return.

The Court: I don't think it is material.

Mr. Fall: I am trying to find out what he has done with reference to talking to people.

The Court: He says he hasn't talked with either of the attorneys, or Mr. Mason, except that Mr. Mason told him to come here for the case.

Q. By Mr. Fall: Have you talked with anyone about this accident since the day it happened, until you talked to Mr. Mason just a few days ago?

A. Just a few days ago; we got a meeting in San Pedro, and he say to me, we have court on the 23rd.

Mr. Gallagher: What is that?

Mr. Fall: "We have court on the 23rd", I assume he means.

The Court: I guess that is what he means.

Mr. Fall: The 23rd of October.

Q. How many members of the crew of the "Blue Sky" were on board the boat on the 22nd of September of last year?

A. I don't know how many.

Q. Were all the crew there on board?

A. When Mr. Evanisevich fell down?

Q. Yes; not right at that time; sometime during the day. [136]

A. Eight men eat dinner.

Q. Eight men ate dinner? A. Yes, eat.

(Testimony of Jerry Marinkovich.)

Q. Did some men go before dinner—leave before dinner?      A. No.

Q. Where did you get the beer that you brought on board that day?      A. In the grocery.

Q. What grocery?

A. The New Deal Market.

Q. Whereabouts is that New Deal Market located?

A. Center Street—16th and Center.

Q. Did you pay for the beer that morning?

The Court: It seems to the court you are going too far.

Mr. Fall: I am asking this to determine whether or not there will be a record of those particular purchases, because I am going to produce that record in this court. That is the only purpose of this, to determine whether or not there would be a record.

The Court: You may ask a very few questions on that matter.

Q. By Mr. Fall: Did you charge the beer, or did you pay for it?

A. We take the beer; when we make the money we pay it.

Q. You didn't pay for the beer that morning?

A. No. [137]

Q. You bought it then that morning, the 22nd of September?      A. Yes.

Q. How many cans were left in the galley after Mr. Evanisevich was injured?

A. I don't know.

(Testimony of Jerry Marinkovich.)

Q. You still had some beer there for the engineers, didn't you?      A. Yes.

Q. There was still some beer left after Mr. Evanisevich was injured?

A. After I finish washing the dishes I went home, and the engineers, they worked on.

Q. What time did you go home?

A. About three o'clock in the afternoon.

Q. But there was still some beer left there when you left to go home?      A. Yes.

Q. About how many cans?

A. I don't know.

Q. There was always a case of beer, wasn't there?

A. I don't know; in the ice box, I don't know how many beer.

Q. How many beers did Mr. Evanisevich have before lunch?      A. I don't know.

Q. How many did he have during lunch? [138]

A. Altogether I count about——

Q. Just a moment. I ask that that be stricken as not responsive. I want to know how many he had during lunch.

A. I am not sure. I just count how many he drank that day.

Q. How much did he have after lunch?

A. Altogether, about six or seven.

Q. After lunch?      A. No, altogether.

Mr. Fall: I ask that the answer be stricken as not responsive.

(Testimony of Jerry Marinkovich.)

The Court: It may go out.

A. I am not sure.

Q. By Mr. Fall: What time did you have lunch?

A. About eleven o'clock.

Q. What time did you finish lunch?

A. Lunch, we eat about half an hour.

Q. You have no recollection of how many he had before lunch, during lunch, or after lunch?

A. No.

Q. How do you arrive at six or seven? How did you arrive at that?

A. Because I count.

Q. You counted it? A. Yes.

Q. Where was he when he had the first can of beer that you saw? [139] A. In the kitchen.

Q. In the kitchen? A. Yes.

Q. Did you mark it down in there every time he had a can of beer? A. No. I remember it.

Q. You remembered it? A. Yes.

Q. Did not Mr. Mason tell you to say that he had six or seven cans of beer?

A. He don't say nobody nothing.

Q. How many cans of beer did you drink that day? A. Maybe one.

Q. How many more than one?

A. One, because I no like beer. We use wine on the boat. I like better to drink a little wine.

Q. How many cans of beer did Jack Fabulich have? A. I don't know.

(Testimony of Jerry Marinkovich.)

Q. How many cans of beer did Marko Bodich have? A. I don't know.

Q. How many cans did Marko Marinkovich have? A. I don't know.

Q. How many cans did Jerry Marinkovich have? A. I don't know.

Q. How many cans did John Slovich have?

A. I don't know. [140]

Q. How many cans did John Brankovich have?

A. I don't know.

Q. You don't know how many cans of beer anyone else had that day, but Mr. Evanisevich, do you?

A. Yes, because I know he like to drink, and somebody like to drink water, and Mr. Evanisevich no like to drink water.

Q. How many cans of beer did the engineers have? A. I don't know.

Q. After Mr. Evanisevich fell, just tell what he did. I understand one foot slipped off the dock, did it?

A. I don't see him when he fell down.

Mr. Gallagher: That is objected to as not cross examination.

Q. By Mr. Fall: You did not see him?

A. No; I just see him hanging with his hand, and Mr. Fabulich catch the foot.

Q. He put his foot over so that he could put it on one of the steps of the rigging?

A. Between the boat and the wharf.

Q. Fabulich put his foot over so that he could

(Testimony of Jerry Marinkovich.)

put it on one of the steps of the rigging, so that he could get up, didn't he?

Mr. Gallagher: I object to that upon the ground it is not cross examination.

The Court: Yes, I think so. Objection sustained.

[141]

Q. By Mr. Fall: How long did he hang there with his one hand?

Mr. Gallagher: Same objection, if your Honor please; not cross examination. I did not go into that.

Mr. Fall: He said he fell, and was hanging there with one hand.

The Court: He may answer the question.

Q. By Mr. Fall: How long did he hold there by one hand?

A. Until Fabulich he catch him, and he went in the boat.

Q. Did he hang there about a minute?

The Court: No, he just stated——

A. I no see when he fell down.

Q. By Mr. Fall: You just saw him hanging there?

The Court: He stated just long enough for Mr. Fabulich to get him in position.

Q. By Mr. Fall: You don't know how long he had been hanging there before you saw Mr. Fabulich bring his legs up? A. No.

Q. How did it happen that you came down on

(Testimony of Jerry Marinkovich.)

board the boat that day? How did it happen that you came on board the "Blue Sky" that day?

A. Because I am cook; cooking.

Q. Did some one tell you to come down there on board? A. Yes, the captain.

The Court: Who did? [142]

A. The captain.

Q. By Mr. Fall: Was that Captain Tom Mason?

A. Yes.

Q. When did he tell you that?

A. The day before.

Q. Was anyone else present? A. No.

Q. Weren't the rest of the crew members there, and the captain "All be down tomorrow"?

A. No; just say three men, and I am four.

Q. Was Mr. Evanisevich on board the boat the day before he was injured?

A. I no remember.

Mr. Fall: That is all.

#### Redirect Examination

Q. Mr. Gallagher: Who were the other men with you when the captain told you to come on board the day of the accident?

A. I no catch you.

Q. You say Captain Mason told you to come on board the day of the accident?

A. No, no—yes; that day.

Q. He told you to come?



(Testimony of Jerry Marinkovich.)

A. The day before.

Q. He told you the day before to go on board the day of [143] the accident? A. Yes.

Q. Where was that? Where did he tell you that?

A. He told me through the telephone.

Q. Were you over on one of the boats?

A. No, I be home.

The Court: He called you up and talked to you over the phone? A. In the phone, yes. [144]

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Los Angeles, California,

Friday, October 25, 1940, 10 A. M.

Mr. Fall: If your Honor please, I have here the book from the New Deal Cash Market in San Pedro, the market from which, I believe, most of the groceries and things for the "Blue Sky" were purchased. Mr. Gallagher and I can stipulate as to some dates and purchases here, to facilitate the matter, rather than call witnesses.

This book shows that on the 30th day of August, 1939, a statement was given to Mr. Mason. They undoubtedly had returned from Mexico at that time. The bill was paid. The statement that had been given to Mr. Mason on the 30th day of August was paid on the 5th day of September; that there were purchases of groceries for the "Blue Sky"

on September 2, 6, 8, 11, 12, 13, 14, 15, 16, and 18. There is noted at the bottom that that was Monday. Apparently the 17th was Sunday; the 19th, the 20th, and the 22nd. The next one after the 22nd was the 28th, and that on the 22nd of September the following items were purchased: Two cases of beer; 18 lamb steak chops; 18 lamb chops; 5 French—I assume that means French bread; 2 lettuce; 4 pounds of tomatoes; 3 radishes, lg.;—I imagine it means large—one lemon pie; one apple pie; one pineapple pie; 10 pounds of grapes, black and Muscat; one and one-quarter B ham——

Mr. Gallagher: Boiled ham.

Mr. Fall: Boiled ham; one and one-quarter pounds M ham. [145] I don't know whether that means minced ham. One quart of milk.

On all of the days after the 13th of September there were—I might say on the 13th of September there was one case of beer in the order; the 14th of September, two cases of beer; the 15th of September, two cases of beer; 16th of September, one case of beer; 18th of September, three cases of beer; 19th, two cases of beer; 20th, two cases of beer; and on the 22nd, two cases of beer. It indicates on most of them that they were Schlitz beer.

I will call Mr. Evanisevich. [146]

JOHN EVANISEVICH,

the libelant, recalled as a witness in his own behalf, having been previously sworn, testified further as follows:

Direct Examination

Q. By Mr. Fall: Mr. Evanisevich, did you have a conversation with Mr. Mason to the effect that you wanted to go away on a vacation?

A. I asked him——

Q. You can answer that yes or no.

A. Yes.

Q. Where was that conversation? Where did it take place?

A. That was the last date when we was working on the nets.

Q. Was it the last day you were working on the nets?

A. The last couple of days, before I got hurt.

Q. Where did the conversation take place?

A. I was asking him, after we were through——

Q. Was it on the boat?

A. On the boat, yes.

Q. Was anyone else present at that time? [147]

A. In front of him, I don't know if anybody knows or not.

Q. What was the conversation? What did you say, and what did he say?

Mr. Gallagher: That is objected to upon the ground that it is immaterial, and not responsive to any issue raised by the pleadings.

(Testimony of John Evanisevich.)

Mr. Fall: Mr. Mason indicated in the examination that this man said he wanted to go off on a vacation, indicating that was the reason why he wasn't back at work.

Q. What did you say, and what did he say?

A. I said I was going to ask him, because he was figuring——

The Court: No, just what was said. You listen to the question.

Q. By Mr. Fall: What did you say, and what did he say?

A. I asked him I like to go up to Murietta springs for a few days, if we don't go fishing, after we get through with the work. Then he says, "I got a chance to go?" Then the last day, when we put the nets on board, it was hot weather down at Pedro, in the evening, and he said to the boys——

Q. This was another conversation?      A. Yes.

Q. What day was this?

A. This was the 21st.

Q. What was that conversation?

A. "I would like to go up to Murietta Springs for a week."

Q. Yes. [148]

A. Then he says, "You can go." Then, at the time, it was the last day going on the nets, and he said to all the boys——

The Court: What day was that?

A. That was the 21st.

(Testimony of John Evanisevich.)

Q. After he told you you could go, you had another conversation? A. The 21st of the month.

The Court: You better straighten that out.

Mr. Fall: Just a minute. Let us cover one thing at a time.

Q. After he told you you could go to Murietta Springs, you had another conversation, or was this all part of the same conversation?

A. That was all a part, except it was so hot—I am going to tell you all about it—it was hot there, I was figuring when it was so hot down there——

[149]

Q. By Mr. Fall: This is the conversation you had on the 21st, not the next morning.

A. Not the next morning?

Q. I want to clear that up. Finish what that conversation was. Did he tell all of the men?

A. He says to the boys——

Q. And who were the boys?

A. All the crew, go in the morning, eight o'clock in the boat; that some holes in the nets, to fix it. Then the clutch, to test it, and everything to get ready. Then when he says that, I went in the morning at eight o'clock on the boat, with the rest of the crew.

Q. Did the boat go to Terminal Island that day?

A. Yes, sir.

Q. After the boat returned, do you know what time it was? Do you know what time it was when the boat returned to San Pedro?

(Testimony of John Evanisevich.)

A. I don't know exactly the time, but it was around between ten and eleven o'clock.

Q. So it was after you returned to San Pedro that you had something to eat?      A. Yes.

Q. You said you stayed on the boat for a while after you had something to eat?

A. Yes. [150]

Q. Where did you say on the boat after you had something to eat?

Mr. Gallagher: I object to that upon the ground that it calls for his conclusion and opinion, and is a self-serving declaration, and furthermore, upon the ground that it has been asked and answered. He testified on his original direct examination fully with reference to his reasons for staying on the boat for approximately two hours after lunch.

Mr. Fall: I submit there was no such question, and no such answer.

The Court: Read the question.

(Record read by the reporter.)

The Court: Overruled.

Mr. Gallagher: Note an exception.

Q. By Mr. Fall: Why did you stay on the "Blue Sky" after——

Mr. Gallagher: I think counsel ought to stick by the question, so as to keep the record straight; otherwise there will have to be an objection to every new question.

Mr. Fall: Let it be stricken.

(Testimony of John Evanisevich.)

A. I stayed on the boat; there was nothing doing. I expected the skipper was going to come down and see if everything was all right.

Mr. Gallagher: I move to strike out this part of the answer, particularly "and I expected the skipper was going to come down to see if everything was all right," upon the ground that it is not competent proof of any fact, and states [151] his conclusions and opinions, and is an expression of his ideas, if he ever had any such.

The Court: Overruled.

Mr. Gallagher: Note an exception.

Q. By Mr. Fall: The skipper did not come down?

A. No, all the time I was on the boat.

Q. Then the men, some of the other men, started to leave, did they, before you did?

A. Some of them went after they ate their lunch; then there was me and four more fellows; the skipper's brother, the skipper's brother-in-law, and another fellow, Jack—what's his name?

Q. Fabulich?           A. Fabulich.

Q. He lives on the boat?

A. He lives on the boat. Then the four was with me; then the skipper's brother went off to some place, and I started to go, go over on the wharf.

Q. When he started to leave was the time you left too?

(Testimony of John Evanisevich.)

A. Yes. I went on the wharf at the same time. I was after him at the same place; I was going off. After his brother got on the wharf, then I stepped on the rigging steps to go off on the wharf, the same as his brother.

Mr. Fall: No further questions on direct examination. [152]

### Cross Examination

Q. By Mr. Gallagher: Mr. Evanisevich, name all of the men who were on the "Blue Sky" on the morning of September 22, 1939, when you first went on board.

A. That is the day when I got hurt, you mean?

Q. Yes. A. Myself.

Mr. Fall: At eight o'clock he is referring to, when you first went on the boat.

A. I don't know exactly every one that got on the boat at eight o'clock, but we was on the boat, me and the rest of the crew.

Q. By Mr. Gallagher: Name them; that is what I want you to do.

A. All right. The first one I am going to tell you is John Zorotoivich.

Q. How do you spell it?

A. I can write it down for you.

Q. Zorotoivich? A. Yes.

Q. That is close enough. A. Yes.

Q. Who was the next one?

A. The next one is what they call, Big Guy Dinco Botovich.



(Testimony of John Evanisevich.)

Q. Dincobotovich?

A. That is just the way I can explain it, the names. [153]

The Court: That is close enough.

A. Then Marko, the owner of part of the boat, —Cvitanich.

The Court: How do you spell that, Mr. Gallagher?

Mr. Gallagher: (Spelling) C-v-i-t-a-n-i-c-h, I think. That is close enough.

Q. Who was the next one?

A. Mate Marinkovich. We call him "Matey".

Q. (Spelling) M-a-t-e?           A. M-a-t-e.

Q. Who is the next one?

A. Jerry Marinkovich. Did I mention Jack Fabulich?

Q. Jack Fabulich?           A. Jack Fabulich.

Mr. Fall: Is that all?

A. No, there are some more, but he forgot to ask me.

Mr. Fall: He asked you to name the men.

A. Then there was another, brother of the skipper; I call him "Marko Marinkovich.

The Court: Is he a brother?

A. He is a brother to the skipper.

The Court: Brother-in-law?

A. Brother, the last one I mentioned.

Mr. Fall: Anyone else?

The Court: Were there three Marinkoviches on there?

(Testimony of John Evanisevich.)

A. Three Marinkoviches; two his brothers, and the cook was.

Mr. Gallagher: I think, if your Honor please, Jerry [154] Marinkovich, the cook, stated he was related to the skipper. A. The cook, no.

Q. Can you think of any others?

A. I don't want to mix up any of the names.

The Court: Just answer. You don't have to explain every time: Zorotwich, Botovich, Cvintanich, Markovich—Matey Markovich, Jerry Markovich, and Marinko Markovich. That is six.

Mr. Gallagher: Jack Fabulich. Did your Honor get that one?

The Court: No, I didn't get that one.

Mr. Gallagher: My count makes eight, including the libelant.

A. I got some more.

Q. Name them. A. Jack Vitilech.

Q. Was he in the crew?

A. Jack Vitilech was in the crew.

Q. How do you spell Vitilech?

A. (Spelling) V-i-t-i-l-e-c-h.

Q. You are sure that Jack Vitilech was on board the boat on the 22nd of September, 1939, the day you were hurt? Please answer yes or no.

A. I am not sure.

Q. Was there any other member of the crew that you will testify was on board on September 22, 1939? [155] A. John Banich.

(Testimony of John Evanisevich.)

Q. How do you spell that? A. B-a-n-i-c-h.

Q. Are you testifying positively that John Banich was on board the day you were hurt, September 22, 1939? Please answer that yes or no.

A. Not exactly.

Q. What other members of the crew were on board the boat that day that you were hurt?

A. I don't think there were any others of the crew, except one besides the crew there was.

Q. I am not asking you beside the crew.

A. All right, I thought you wanted me to say who was it.

Mr. Fall: I think the question was to proceed and name all the men on board the boat.

Mr. Gallagher: Let me repeat those names, and see if you remember any other members of the crew who you say were on board the day of the accident: Yourself, John Zorotivich, Dinco Botovich, Marko Cvitanich, Mate Marinkovich, Jerry Marinkovich, Jack Fabulich, Marico Markovich, Jack Vitalich, and John Banich.

A. I was sure for the first one, except the two last ones I can't tell you exact if they were, because that was thirteen months ago.

The Court: As I understand, you are not sure whether Vitalich or Banich were on? [156]

A. Yes; all the rest of it I was sure.

Q. By Mr. Gallagher: What kind of work did Zorotivich do on that day of the accident, that you saw him doing?

(Testimony of John Evanisevich.)

A. Three Marinkoviches; two his brothers, and the cook was.

Mr. Gallagher: I think, if your Honor please, Jerry [154] Marinkovich, the cook, stated he was related to the skipper. A. The cook, no.

Q. Can you think of any others?

A. I don't want to mix up any of the names.

The Court: Just answer. You don't have to explain every time: Zorotwich, Botovich, Cvintanich, Markovich—Matey Markovich, Jerry Markovich, and Marinko Markovich. That is six.

Mr. Gallagher: Jack Fabulich. Did your Honor get that one?

The Court: No, I didn't get that one.

Mr. Gallagher: My count makes eight, including the libelant.

A. I got some more.

Q. Name them. A. Jack Vitilech.

Q. Was he in the crew?

A. Jack Vitilech was in the crew.

Q. How do you spell Vitilech?

A. (Spelling) V-i-t-i-l-e-c-h.

Q. You are sure that Jack Vitilech was on board the boat on the 22nd of September, 1939, the day you were hurt? Please answer yes or no.

A. I am not sure.

Q. Was there any other member of the crew that you will testify was on board on September 22, 1939? [155] A. John Banich.

(Testimony of John Evanisevich.)

Q. How do you spell that? A. B-a-n-i-c-h.

Q. Are you testifying positively that John Banich was on board the day you were hurt, September 22, 1939? Please answer that yes or no.

A. Not exactly.

Q. What other members of the crew were on board the boat that day that you were hurt?

A. I don't think there were any others of the crew, except one besides the crew there was.

Q. I am not asking you beside the crew.

A. All right, I thought you wanted me to say who was it.

Mr. Fall: I think the question was to proceed and name all the men on board the boat.

Mr. Gallagher: Let me repeat those names, and see if you remember any other members of the crew who you say were on board the day of the accident: Yourself, John Zorotivich, Dinco Botovich, Marko Cvitanich, Mate Marinkovich, Jerry Marinkovich, Jack Fabulich, Marico Markovich, Jack Vitalich, and John Banich.

A. I was sure for the first one, except the two last ones I can't tell you exact if they were, because that was thirteen months ago.

The Court: As I understand, you are not sure whether Vitalich or Banich were on? [156]

A. Yes; all the rest of it I was sure.

Q. By Mr. Gallagher: What kind of work did Zorotivich do on that day of the accident, that you saw him doing?

(Testimony of John Evanisevich.)

A. I know he was on the boat, but he was going to do some work in the engine room.

Mr. Gallagher: May I ask your Honor to order that stricken out? I asked the witness what he saw him doing, if anything. He should tell us what he saw him doing, or say he didn't see him doing anything.

The Court: It may go out.

A. I didn't see him doing anything, except he was supposed to be in the engine room.

Mr. Gallagher: I move to strike out all of the answer after "I didn't see him doing anything."

The Court: It may go out.

Q. By Mr. Gallagher: What if anything did you see Dinco Botovich doing on September 22, 1939?

A. He was going in the engine room, but he wasn't down in the engine room. I don't know what he was doing.

Q. What if anything did you see Marko Cvitanich doing on the day of the accident?

A. He was most of the time up on the pilot house, going forth and back with the boat a couple of times; then he stayed there, looking around, what the mechanics were going to say about his clutch.

Mr. Gallagher: I move to strike out that part of the answer that he stayed there to see what the mechanics were [157] going to do about his clutch, upon the ground that it states a conclusion of the witness, and not anything that he could see him doing.

(Testimony of John Evanisevich.)

The Court: It may go out.

Q. By Mr. Gallagher: Mr. Evanisevich, what did you see Mate Marinkovich doing on the day of the accident?

A. He was around the boat. There was some holes to do, and he was making some brand new, we call them brailers, to bail the fish from the hatch.

Q. Jack Marinkovich was cook?

A. He was.

Q. That is the scoop net you refer to?

A. A brailer scoop net.

Q. That is a small net?

A. The pipe is three feet across, and it is about 16 meters, something like that, long.

Q. Describe it. It is a net, which has a circular piece of metal or wood, and handle, and then the net is attached to this circular pipe.

The Court: It is about three feet across and 16 inches deep?

A. Just before that it was not on the pipe, at the time he was going to make a new one to put on the pipe. I worked with it. It was not knotted. I was to make a new one knotted, and I started it, making a new one, because it is square, this way, and when we knot it, after it is all done, [158] then we put it on the pipe. The pipe is on a pole or stick, and you use it to grab the fish from the hatch.

Q. After Mate Marinkovich finished the work

(Testimony of John Evanisevich.)

he was doing on that brailer scoop net, did you do any work on the brailer scoop net? Please answer yes or no.           A. No.

Q. What time did Mate Marinkovich start to work on that brailer or scoop net—just what time?

A. I don't know exactly, because he don't work steady on it. He did a little bit here, and a little bit there; sometime he fixed the scoop net, or something, and then he fixed the boat.

Mr. Gallagher: I move to strike out all the answer, if your Honor please, on the ground that it is not a definite statement of anything, and is not responsive to the question.

The Court: Read the question and answer.

(Record read by the reporter.)

The Court: Denied. Mr. Evanisevich, the Court has asked you several times just to answer the question. Pay attention to the question, and answer it.

A. All right.

Q. By Mr. Gallagher: What if any work did you see Jack Fabulich doing on the day of the accident?

The Court: Do you understand what that question is?

A. Yes.

The Court: What is it? [159]

A. He asked me if I seen what Jack Fabulich was doing.



(Testimony of John Evanisevich.)

The Court: He said what kind of work was he doing. I just want you to answer as to what kind of work he was doing.

A. I seen him—maybe there was so many holes in the net, he fixed some of the holes a little bit. He don't work steady either, doing this.

The Court: What kind of work was he doing?

A. Fixing some little holes in the net.

Q. By Mr. Gallagher: You testify positively that Mr. Fabulich was repairing the net on board the "Blue Sky" on September 22, 1939, do you?

A. Yes.

Q. You saw him doing that? A. Yes, sir.

Q. What if any work did you see Marko Marinovich doing on board the "Blue Sky" on September 22, 1939?

A. I don't know exactly what he was doing.

Q. You say you don't know exactly. Did you see him doing anything on that boat on that day, to-wit, September 22, 1939?

A. He was around the boat, but can I say this? I don't see any time what he was doing, because I was up at the pilot house doing my work, so I can't say exactly what every man was doing on the boat. I ask if I can say that?

The Court: Yes, it is permissible to say that.

Mr. Gallagher: I move to strike out the answer, that part of it wherein he states, "I was up in the pilot house [160] doing my work," upon the ground

(Testimony of John Evanisevich.)

that it states a conclusion and opinion of the witness, and is not responsive to the question.

The Witness: Can I say a word, please?

The Court: I think you had better consult with your attorney. Go ahead, Mr. Gallagher.

Mr. Gallagher: I did not hear your Honor rule on my motion.

The Court: I will deny the motion.

Mr. Gallagher: I will take an exception.

Q. Mr. Evanisevich, where did you live in the month of September, 1939?

A. In San Pedro.

Q. What street address?

A. 926 14th Street.

Q. Are you married?           A. Yes, sir.

Q. Were you living there with your wife during that month?

A. I live with my wife all the time.

Q. What?           A. Yes, sir.

Q. Did you sleep on the boat any night in September, 1939?           A. No, sir.

Q. Where did you sleep every night in September, 1939?           A. At my home.

Q. One of these men that you have mentioned was John [161] Zorotovich, a fisherman?

A. He was a fisherman, the same as me, except he take care——

Q. Please answer the question. The question was: Was he a fisherman?           A. Yes.

Q. Was Dinco Botovich a fisherman?

(Testimony of John Evanisevich.)

A. Yes.

Q. Was Marko Cvitanich the engineer?

A. He was the engineer.

Q. What was Mate Marinkovich?

A. He was a fisherman, like myself, working all the work like we do.

Q. Jerry Marinkovich was the cook?

A. Jerry Marinkovich was the cook.

Q. Jack Fabulich, what was he?

A. He was the same as the others on the boat.

Q. A fisherman?           A. A fisherman.

Q. And Marico Marinkovich was a fisherman?

A. Marico Marinkovich was a fisherman. He was no fish on the boat before; he just go to the boat to start working the sardine season. He was working with us, to help us work on the nets, and everything. [162]

Q. Mr. Evanisevich, when you got on board the boat, on the morning of the accident, what was the first work you say you did? [164]

A. The first thing, I started to work to repair them scoop nets, like I told you.

Q. What else did you work on, if anything?

A. I have lots to do. I don't do nothing, except finish that scoop.

Q. What was the answer?

(Answer read by the reporter.)

Q. After you finished working on the scoop net did you do any other work on the boat that day? Yes or no.

(Testimony of John Evanisevich.)

A. Yes, a little bit, after I finished, we try to make some meshes in that scoop net.

Q. You perhaps did not understand my question. Did you do any work on September 22, 1939, on that boat, excepting with that net? Yes or no.

A. Yes.

Q. What other work did you do besides the net?

A. As I say, I make a few meshes on the new net. That was all I was doing.

The Court: That was in connection with the scoop net?

Mr. Fall: The second one. There was more than one.

A. The second one. I finished. And the next one after I finished I don't do much; just a little bit, make some new meshes, because I can't keep no track of every minute on the boat.

Q. By Mr. Gallagher: Did you do any work on that boat the day you were hurt, excepting the work on two scoop nets? [165]      A. No.

Q. Did you do any work helping to tar the nets, after the Mexican season was over?

A. Yes, sir.

Q. Where was that net tarred?

A. Down at the S. P. slip, by the Fishermen's Cooperative Association.

Q. It was not on the boat when it was tarred, was it?

A. It was on the shore when we tarred it.

(Testimony of John Evanisevich.)

Q. After you tarred the net on shore, where was it taken?

A. It was taken up on the hill, and spread out, to dry it out.

Q. That was on land? A. On land, yes.

Q. Was that same net brought back on board the boat, in preparation for the sardine season?

A. Yes. [166]

Q. Did you help bring it on board?

A. Yes, sir.

Q. How long before the date you were hurt did you bring that net back on board?

A. Oh, around five days; something like that.

Q. Mr. Evanisevich, in addition to tarring the large net, did you do any of the work on the large net on shore?

A. That is, did I repair it, do you mean, the same day or what?

Q. No, you remember when you took the big net off the boat, and took it on shore, after the tuna season was over? A. Yes.

Q. Were any repairs made to that net on shore? That is, were any of the meshes broken?

A. We don't repair the net; only we take it apart and put it on the wharf to dry.

Q. You put it on the wharf to dry?

A. Yes, sir.

Q. After it was dried were any repairs made to that large net on shore? A. No, sir.

(Testimony of John Evanisevich.)

Q. Where was it tarred? A. I don't know.

Mr. Fall: I think counsel is assuming something not in evidence, that the tuna net was ever tarred.

Q. By Mr. Gallagher: Did you do any work on the [167] tuna net, excepting to spread it out on the hill?

Mr. Fall: To which we object as being incompetent, irrelevant and immaterial.

Mr. Gallagher: I will withdraw the question.

Q. Mr. Evanisevich, what kind of a net is used to catch sardines for the trade?

Mr. Fall: To which we object as being improper cross examination.

The Court: Overruled.

A. Sardine net, do you mean?

Mr. Gallagher: Yes.

A. Some of it is nine, some twelve, and some parts it is fifteen thread. Some of the net is one and a quarter inches, some an inch and a half, some used to be one inch and three-quarters or five-eighths; something like that.

Q. What kind of a net was on the "Blue Sky" for catching sardines for the trade?

Mr. Fall: That is objected to as being indefinite. He doesn't say whether 1920 or 1940.

Mr. Gallagher: 1939, in September.

Mr. Fall: What time in September?

Mr. Gallagher: At any time in September.

Mr. Fall: To which we object, your Honor, as not being material.

(Testimony of John Evanisevich.)

The Court: Overruled. You may answer what kind of a net was there for catching sardines just before you were [168] hurt.

A. A sardine net.

The Court: Go ahead.

Q. By Mr. Gallagher: How many fathoms was the sardine net?

A. Exactly I couldn't tell you, but it was around—I can't just tell you.

Q. Just approximately.

A. Approximately—I can't give it to you exactly. I wasn't taking care of that alone, except they were talking about it.

Q. It was over a hundred fathoms?

A. It was over two hundred fathoms, so far as that goes.

The Court: You have your answer. Go ahead.

Q. By Mr. Gallagher: Where did you get the sardine net to put it on board the boat?

A. After we——

Q. Not after anything. Where did you get it to put on board the "Blue Sky" in September, 1939?

A. What date you mean?

Q. No, where did you get it?

A. I can't get you what you mean.

Q. Was the sardine net on the boat when you came back from Mexico?      A. No, sir. [169]

Q. When was the sardine net put on board the "Blue Sky"?

(Testimony of John Evanisevich.)

A. On the 21st of September, late in the evening.

Q. Where did you get the sardine net to put it on board the vessel?

A. It was on the wharf; then we put it on the boat.

The Court: The Court will limit the cross examination on this point.

Q. By Mr. Gallagher: Had you done any work on the sardine net before you saw it on the wharf, in September, 1939?

A. I was working to hang it, and finish it.

Q. Where was that work done?

A. That was——

Q. Where?

A. It was done out in the harbor—You mean, at what place?

Q. On board the vessel, or on shore?

A. On shore.

The Court: Just a minute. How much more of this do you have in mind asking?

Mr. Gallagher: That is all.

#### Redirect Examination

Q. By Mr. Fall: This is not really redirect examination; just one question I would like permission to [170] ask him: Mr. Evanisevich, did you suffer or have any injury to your left shoulder, from the time that you got off, after you got off the boat, on the 22nd, until you went to see Dr.



(Testimony of John Evanisevich.)

McCracken a few days later?

A. Excuse me; please explain it again.

The Court: Read the question.

(Question read by the reporter.)

A. Do you mean if I had suffering with my arm after I got hurt?

Q. By Mr. Fall: Did you hurt your left shoulder at any time after you left the boat, and before you got to Dr. McCracken?

A. No, after I got hurt on the boat, that was the time I hurt my arm.

Q. You never had any other injury to your left shoulder?      A. No, sir.

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MARKO BODICH,

called as a witness on behalf of the libelant, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Fall: How do you spell your name?

[171]

A. B-o-d-i-c-h.

Q. Mr. Bodich, what is your occupation?

A. Fisherman, and president of the Fishermen's Cooperative Association.

Q. What is the Fishermen's Cooperative Association?

A. It's the group of the Boat Owners Association.

(Testimony of Marko Bodich.)

Q. Of the boat owners? A. Yes.

Q. Is Tom Mason a member of the Fishermen's Cooperative Association? A. Yes, sir.

Q. What does the Association do?

Mr. Gallagher: That is objected to, if your Honor please, upon the ground it is immaterial, and does not prove or tend to prove any issue in this case.

The Court: Sustained.

Q. By Mr. Fall: Is the Fishermen's Cooperative Association the representative of the Boat Owners—its members?

Mr. Gallagher: I object to that upon the ground that it calls for the conclusion and opinion of the witness, and it would not be relevant to any issue in this case.

The Court: Sustained.

Q. By Mr. Fall: Did the Fishermen's Cooperative Association negotiate an agreement with the United Fishermen's Union—— [172]

A. Yes, sir.

Mr. Gallagher: I move to strike the answer. I don't think counsel finished with his question.

Mr. Fall: No.

The Court: Read the question, please.

(Question read by the reporter.)

Q. By Mr. Fall: ——in March, 1939, with reference to the employment of the members of the Fishermen's Union by the members of the Fishermen's Cooperative Association?

(Testimony of Marko Bodich.)

Mr. Gallagher: That is objected to upon the ground that it calls for the conclusion of the witness, and upon the further ground that it is immaterial.

(Discussion.)

The Court: Will you read the question?

(Question read by the reporter.)

The Court: That at least calls for a conclusion. It was objected to in part on that ground.

Q. By Mr. Fall: Did they negotiate a contract—Withdraw the question.

Mr. Gallagher: I think we can save time, if your Honor please. I don't want to put any technical blocks in the way of the libelant. I will stipulate with the libelant that he has in his hands the contract that was executed by and between the Fishermen's Cooperative Association and the United Fishermen's Union of the Pacific. I will further stipulate that Mr. Tom Mason alone was a [173] member of the Fishermen's Cooperative Association, and if counsel states that the plaintiff was at all times mentioned in this lawsuit a member of the United Fishermen's Union of the Pacific I will stipulate that is the fact.

Mr. Fall: He was.

Mr. Gallagher: But I will object to the contract upon the ground that it is not material to any issue in this case, and upon the further several grounds that it is not competent as proof of any fact in this case; that it is hearsay.

(Testimony of Marko Bodich.)

Mr. Fall: If your Honor please, Mr. Mason has testified that he is one of the owners and partners owning the "Blue Sky". I will further show that he is not only one of the owners; we have also shown he is the master and also that he was the managing owner.

Mr. Gallagher: I will stipulate with you that he was the managing owner. I would like to suggest, if your Honor has no objection that Mr. Fall state what his purpose is in offering the contract, and then we might get somewhere.

Mr. Fall: Your Honor, I intend to show by this contract that there was an obligation on the part of the "Blue Sky" to employ this libelant for the season, for the sardine season, under a particular paragraph in this agreement which states the period of the employment.

Mr. Gallagher: If that is the purpose I object to [174] the introduction of the contract upon the following grounds: Severally, it is not competent for the proof of any such fact, and it is not material to any issue here.

Mr. Fall: We have shown that the man was employed. Now, we are entitled to show by this contract, which sets it forth, the period of the employment. That is the thing that Mr. Gallagher was asking for the other day. He thought if there was a contract it should be shown. We have the contract, and I submit to your Honor that the "Blue Sky" is bound by this contract.

(Testimony of Marko Bodich.)

The Court: You have not shown to the Court yet the part that you desire to offer.

Mr. Fall: I desire to offer paragraph 14.

Mr. Gallagher: Mr. Fall, will you stipulate that Mr. Mason's signature is not anywhere contained on that document?

Mr. Fall: Yes, that is correct.

The Court: Just these four lines in paragraph 14?

Mr. Fall: I think the whole of 14, Section A, sets forth the terms of employment; if the man doesn't show up he was to be docked at a certain rate, and certain things will happen. I think it is material.

Mr. Gallagher: I don't think it is material for any purpose, your Honor, nor competent for proof of any fact disputed here.

The Court: Objection overruled. Let it be [175] received—that particular part.

Mr. Gallagher: Note an exception.

The Court: It will be marked Libelant's Exhibit 1.

Q. By Mr. Fall: Mr. Bodich, is this your signature to the contract?      A. Yes.

Q. You are president of the Fishermen's Cooperative Association?      A. Yes, sir.

Q. Did you sign this by the direction of the Fishermen's Cooperative Association?

A. Yes, sir.

(Testimony of Marko Bodich.)

Mr. Gallagher: Just a minute. That is objected to upon the ground that it calls for the conclusion of the witness, and I move to strike out the answer.

The Court: It may go out.

Q. By Mr. Fall: This is the signature of John Rasson? A. Yes.

Q. You have seen his signature?

A. Correct. John Rasson is business manager of the Union. This seems to be his signature. [176]

Q. By Mr. Fall: Mr. Bodich, how long have you been fishing on this coast?

A. On this coast I have been fishing since 1928, in Southern California.

Q. Are you familiar with sardines?

A. Yes, quite a bit.

Q. Have you fished them very often?

A. Fished?

Q. Yes. A. I have fished every season.

Q. For how long?

A. I started fishing sardines in 1930.

Q. 1930? Have you fished mackerel?

A. I did not do much fishing of mackerel. Once in a while we get mackerel with the sardines.

Q. Are you familiar with the mackerel?

A. Yes, quite a bit.

Q. Is a sardine from the mackerel family?

Mr. Gallagher: I object to that upon the ground that no proper foundation has been laid. The mere

(Testimony of Marko Bodich.)

fact that [178] the man is a fisherman would not qualify him to specify the different families. In support of my objection I would like to take the witness on voir dire.

Mr. Fall: I will withdraw the question, your Honor, and I submit Webster's International Unabridged Dictionary. I think it is conclusive as to the definition of what a mackerel is, and what a sardine is.

The Court: The answer will go out, and the question remains unanswered.

Q. By Mr. Fall: Mr. Bodich, you have been a boat owner, have you, for some time?

A. Yes, sir.

Q. For how long?

A. I have been a boat owner all this time I have been fishing in the State of California, and previous years up north. In fact, I have been a boat owner ever since I have been in the fishing business.

Q. How long has that been?

A. I started in 1910.

Q. From 1910 up to the present time you have employed men as fishermen? A. Yes, sir.

Q. But at the present time you don't have your boat; the government has it? Rather, you sold it to the government? A. Yes. [179]

Q. Do you know whether there was on the Pacific Coast a custom with reference to the period of time a fisherman is employed for, when he is em-

(Testimony of Marko Bodich.)

ployed as a member of the crew of a fishing boat? I will ask you to answer "Yes" or "No".

Mr. Gallagher: I object upon the ground that it calls for the conclusion and opinion of the witness, and is not the proper way to prove the existence of a custom.

(Discussion.)

Mr. Gallagher: We will save time, if your Honor please, I will withdraw the objection to the form of the question, and put the objection on this ground as to the merits: Whether there was or was not a purported custom, such custom would be immaterial, and there is no proper foundation laid showing that any custom was taken into account by either of the parties to this particular action.

The Court: Overruled. You may answer.

Mr. Gallagher: Exception.

A. Am I to answer?

The Court: Yes, answer.

A. In the past history of fishing that I did it used to be up to the individual boat owners to hire; he could make arrangements with the men; but after 1934, I believe——

The Court: This has reference to 1939, the summer of 1939 and the fall of 1939.

Mr. Gallagher: May it be understood that this entire [180] line is subject to the same objection and exception?

The Court: Do you agree to that?

Mr. Fall: That is agreeable, yes.



(Testimony of Marko Bodich.)

The Court: It is satisfactory to the Court.

Q. By Mr. Fall: Referring to 1939.

A. In 1939 the customary and usual way was to sign the contract; we have the working agreement signed with the union, and the men are hired.

The Court: He is not asking about the contract, Mr. Bodich.

Mr. Fall: Just the custom.

The Court: You were asked, Mr. Bodich, what is the custom among fishermen in this locality here. I don't believe that was added.

Mr. Fall: I put it, this coast.

The Court: The Pacific Coast.

Mr. Fall: The Pacific Coast.

A. Your Honor, I believe I can explain right now; I get the idea: We usually negotiated with the individual fisherman——

The Court: No, that won't be an answer.

Q. By Mr. Fall: You say there is a custom. What is the custom, Mr. Bodich?

The Court: Among fishermen on the Pacific Coast, in the vicinity of Los Angeles, if you know? Is there such a custom? [181]

A. The custom is that the fishermen ask the captain for a chance on the boat.

Q. By Mr. Fall: What is the period for which he is employed?

A. If he is for the season——

The Court: Read the answer.

(Answer read by the reporter.)

(Testimony of Marko Bodich.)

The Court: If he is employed for how long?

A. If he is employed the season of fishing, which is two in the local port—two seasons——

Q. By Mr. Fall: You have two seasons? If the man is employed for one season it does not mean that he is employed for the two seasons? It just means one of those two seasons?

A. One season, yes.

Q. You have referred to two seasons; one of those seasons is the tuna season and the other the sardine season? A. Yes.

Q. When you refer to the two seasons, one was the tuna season and the other the sardine season?

A. Yes.

Mr. Fall: That is all.

#### Cross Examination

Q. By Mr. Gallagher: Mr. Bodich, since 1934 you [182] say you have hired a great many fishermen? A. Yes, sir.

Q. You say fishermen would come to you and ask you for a chance, is that right?

A. Correct.

Q. Then you would try him out?

A. Correct.

Q. And if he suited you then you would hire him?

A. We hire him in the first place.

Q. Just answer my question "Yes" or "No": If he suited you you hired him? A. Yes.

(Testimony of Marko Bodich.)

Q. Were you fishing in 1939? A. I was.

Q. Were you fishing in October, 1939?

A. I was.

Q. Was there at that time, that is, in the month of October, 1939, a strike or a jurisdictional dispute between the CIO and the American Federation of Labor, in the canneries?

A. Yes, sir, that was June and July, I believe; two months.

Q. It was up in San Francisco, in October, wasn't it, a 15-day strike, a jurisdictional dispute between the CIO and the American Federation of Labor, in the canneries?

A. That is correct. We did not go out fishing.

[183]

Q. The reason you did not go out fishing in San Francisco in October, 1939, was because your union, members of the crew, would not cross any picket lines being maintained around the canneries, is that right? A. Correct.

Mr. Fall: I object as calling for the conclusion of the witness.

(Discussion.)

The Court: Objection overruled.

Q. By Mr. Gallagher: Mr. Bodich, in your experience in hiring men, fishermen, how long have you been hiring members of the United Fishermen's Union of the Pacific?

A. Since the union was organized.

Q. When was that?

(Testimony of Marko Bodich.)

A. I believe it was 1934 or '5.

Q. Just approximately—I am not trying to trap you into some date; did you ever have any of those fishermen quit before the season was over?

A. We did.

Q. With your consent or without your consent?

A. Without our consent.

Q. That has happened very often?

A. It happens pretty nearly quite often on the different boats. We have different boats in our organization. Not with me; about twice with me in the last four years. [184]

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JOHN EVANISEVICH,

the libelant, recalled by Mr. Gallagher:

Q. By Mr. Gallagher: Mr. Evanisevich, how long have you been a member of the United Fishermen's Union of the Pacific?

A. Since 1933.

Q. Since 1933 have you engaged as a fisherman here on the Pacific Coast?

A. Yes, sir.

Q. In sardine fishing?

A. Up in San Francisco.

Q. Will you explain to the Court how that fishing is done? By that I mean, what do you do with the sardines when you catch them?

A. What we do with the sardines when we catch them?

(Testimony of John Evanisevich.)

Q. Do you take them to the shore?

A. I used to work, take them to what they call——

Q. Cannery?

A. Outside the steamer; they call it a reducing plant, and then sometimes we take them to the canneries.

Q. These reducing plants are what, steamers?

A. Steamers.

Q. If you didn't take them to the steamer, you would [185] take them to the canneries?

A. When we were working for the steamers we would take them to the steamers; when we was working for the canneries, to the canneries.

Q. In San Francisco did you do any sardine fishing in 1939?      A. No, sir.

Q. On these other vessels, when you have been hired, did you work every season from 1933 to September 1939?      A. Yes, sir.

Q. That is, each year you would work the tuna season; then you would also work the sardine season?      A. Yes.

Q. Did you ever quit your job on any of those boats before the season was over?      A. No, sir.

Q. Did you ever see any other fishermen on any boat that you were on quit before the season was over?      A. Yes, I did.

Q. How many?

A. A couple or three, during the whole of this time.

(Testimony of John Evanisevich.)

Q. I don't mean for sickness now; I mean, they just quit work because they felt like it?

A. Yes, they went off the boat.

The Court: Will you read the answer?

(Answer read by the reporter.) [186]

Q. By Mr. Gallagher: They were not hurt or sick? A. They went to another place.

Q. They quit their job, and went to work on another boat, is that it? A. Yes.

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### MATE MARINKOVICH,

a witness called by and on behalf of the respondents, being first duly sworn, testified as follows:

#### Direct Examination

Q. By Mr. Gallagher: Your name is Mate Marinkovich? A. Yes.

Q. What do you do for a living?

A. What do I do?

Q. What do you do for a living? Do you work?

A. Yes.

Q. What kind of work?

A. Fisherman's work.

Mr. Gallagher: If your Honor please, I may have to have some indulgence here, because this witness does not speak as good English as some of the others who have been here. I might have to lead him a little bit.

(Testimony of Mate Marinkovich.)

Q. Were you on the "Blue Sky" on the day Mr. [187] Evanisevich was hurt? A. Yes.

Q. What did you do that day?

A. Nothing.

Q. What did Mr. Evanisevich do that day?

Mr. Fall: Just a minute. To which we object as calling for the conclusion of the witness. He is entitled to say what he saw him do.

The Court: Yes, I think so.

Q. By Mr. Gallagher: What did you see Mr. Evanisevich do on the day of the accident?

A. Nothing.

Q. Did you see him all day when he was on the boat? A. Yes, all day, until 2:30.

Q. Until 2:30? A. Yes.

Q. Did he work on any net? A. Nothing.

Mr. Fall: I ask that the answer be stricken as calling for the conclusion of the witness.

The Court: It is denied.

Mr. Fall: I think he would be entitled to say he saw him.

The Court: The Court has that in mind.

Q. By Mr. Gallagher: What part of the boat were you on all that day until 2:30? [188]

A. Me?

Q. Yes, you.

The Court: If there is anybody here who can act as interpreter for this man I wish he would be called.

Mr. Fall: Part of the family.

(Testimony of Mate Marinkovich.)

The Court: The Court has no objection to that.

Mrs. Helen Mason: I can interpret. I am his sister-in-law.

Mr. Fall: Are you the wife of Tom Mason?

Mrs. Mason: Of Tom Mason, yes.

(Mrs. Helen Mason was here sworn as interpreter.)

Mr. Gallagher: Will you please repeat exactly what I say to him, in his language, and then when he answers you will repeat in English exactly what he says. Don't add anything to it; don't leave anything out.

Q. Tell the Court whether you were in a position to see Mr. Evanisevich all day on September 22, 1939.

A. He said that Mr. Evanisevich was there at about 2:00 o'clock. They left the boat, and he was there all the time, and didn't do anything.

Mr. Fall: I ask that the answer go out.

The Court: Yes, it may go out.

Mr. Gallagher: That is not responsive. I will re-frame the question. Will you tell the Court whether you were on deck of the "Blue Sky" all day on September 22, until you got off the boat?

[189]

(Mr. Evanisevich here interprets.)

The Interpreter: He claims nobody work anything that day.

Mr. Fall: I will say to my client that I think



(Testimony of Mate Marinkovich.)

he will probably get it mixed up unless you repeat it the same thing Mr. Gallagher did.

The Court: You had better stay out of it. Mr. Dewing is a good reporter, but he can't take down what two or three of you say at the same time. Let me ask you this question: Did you see Mr. Evanisevich on the morning of the day when he got hurt? Tell him to answer "Yes" or "No".

A. Yes, he was there from 8:00 o'clock to 2:30, in the afternoon.

Q. Did you see him all day before he got hurt, after he came on the boat?

A. He did. They were together.

The Court: Go ahead.

Q. By Mr. Gallagher: Did he do any work of any kind on that boat that day? A. No.

Q. What did you see him doing on the boat?

A. Nothing. [190]

Q. By Mr. Gallagher: Mr. Marinkovich, will you tell the Judge whether Mr. Evanisevich was under the influence of liquor at the time he fell down?

Mr. Fall: To which we object again, as not tending to prove or disprove any issue before the Court. It certainly is not directed to any particular amount of influence. I think it is indefinite.

The Court: Overruled.

Mr. Fall: Exception. [192]

A. Mr. Evanisevich was drunk, not too drunk,

(Testimony of Mate Marinkovich.)

but he was drunk enough that he wasn't sober. He was drunk.

#### Cross Examination

Q. By Mr. Fall: Did anyone tell you to say in court today that Mr. Evanisevich was drunk on September 22, 1939? A. No, sir.

(At this point there was an adjournment until 2:30 o'clock in the afternoon.)

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Friday, October 25, 1940, 2:30 o'clock, P. M.

#### MATE MARINKOVICH,

resumed the stand and testified as follows:

Q. By Mr. Fall: If your Honor please, there is a man here, that I believe will certainly qualify as an interpreter. His name is Mr. Ivankovich. He is not a party to the action, or related to any of the other parties to it. And I think that would be better.

The Court: If he speaks well.

(George Ivankovich was here sworn as interpreter in the Croatian language, and acted as interpreter during the examination of this witness.)

Q. By Mr. Fall: Mr. Marinkovich, what time did you [193] go on the "Blue Sky" on September 21, 1939? A. 8:00 o'clock in the morning.

Q. Who was present when you arrived?

A. Marko Cvitanich.

(Testimony of Mate Marinkovich.)

Q. Anyone else?

A. He only found this fellow. He don't know.

Mr. Gallagher: What is the answer?

A. He said he only find this man.

The Court: Use the same words he uses. If he says "I" you say "I".

A. He did not say "I".

The Court: What did he say?

A. He said he can only find one man on the boat.

The Court: Who could?

A. He could only find one on the boat.

The Court: Didn't he say "I could only find one man on the boat"?

Mr. Gallagher: I think the interpreter thinks the Judge said he could only find one man on the boat.

A. He said I find Marko on the boat, and after five minutes the rest of the crew arrived.

Mr. Gallagher: May it be stipulated that whenever the interpreter uses the second person the reporter should use the first person and say "I said"?

Mr. Fall: Just explain it exactly; use the same words that he says. [194]

Q. Who is the next man to come aboard the boat, after you arrived?

A. Jack Fabulich then arrived next.

Q. Who arrived next?

A. I don't know. I didn't watch who came after.

(Testimony of Mate Marinkovich.)

Q. How many men were on board the "Blue Sky" at 10:00 o'clock in the morning?

A. Nine men. There was nine men.

Q. Did the "Blue Sky" remain in San Pedro all morning?           A. Yes.

Q. Was the "Blue Sky" taken out in the channel to try out the clutch?

A. I am not sure. I don't know.

Q. Were you on the boat all morning?

A. Yes, I was.

Q. You don't remember whether the boat was taken out to try out the clutch, is that right?

Mr. Gallagher: That is objected to upon the ground that it would be immaterial, if your Honor please, in that there is no evidence proving or tending to prove that any employment which might have existed, so far as the libelant is concerned, would require him to do anything with trying out the clutch. He doesn't claim that he was employed as an engineer; and he doesn't claim that he did anything about the clutch on the day of the accident. He claims that he was a fisherman, and he says that the only work he did was [195] either making or repairing the brailer.

Mr. Fall: That was not the purpose of the question.

The Court: Hasn't he already stated that he did not know?

Mr. Gallagher: He said he wasn't sure.

(Testimony of Mate Marinkovich.)

Mr. Fall: I want to find out if it is because he did not remember.

The Court: You may ask him. Overruled. I think you had better change your question.

Mr. Gallagher: May I inquire of counsel if the purpose of this line is merely to test his recollection?

Mr. Fall: That is correct.

Q. Just what did you do on the "Blue Sky" when you arrived at 8:00 o'clock in the morning?

A. Nothing.

Q. Where did you go on the "Blue Sky" when you arrived at 8:00 o'clock in the morning?

A. I stayed in the boat, and talking to the other crew that were on the boat at the time.

Q. That were on the boat at the time? What part of the boat did you stay on?

A. I was in the kitchen at the time.

Q. You were in the kitchen? A. Yes.

Q. How long did you stay in the kitchen?

A. I don't know how long I stayed. [196]

Q. Who else was in the kitchen with you?

A. Jack Fabulich.

Q. Where is the kitchen located on the "Blue Sky"? A. On the center of the boat.

Q. Did you stay in the kitchen until 11:00 o'clock?

A. I stayed in the kitchen, and just off on the deck once in a while.

(Testimony of Mate Marinkovich.)

Q. About how long were you in the kitchen between 8:00 o'clock and 12:00 o'clock noon on September 22nd?

A. I don't know exactly how long.

The Court: Mr. Fall, I think we are taking up too much time, and that applies to Mr. Gallagher as well, but nevertheless the Court thinks you are taking up too much time on these matters. I want you to ask the questions as directly as you can, and finish this phase of the examination. As I say, I realize that Mr. Gallagher did the same thing, but nevertheless the Court should have stopped him just as well.

Q. By Mr. Fall: Were you in the kitchen two hours? A. I don't know.

Q. Was Jack Fabulich in the kitchen with you the whole time you were in the kitchen?

A. He got out, outside, and back in the kitchen again.

Q. Where was Mr. Evanisevich when you were in the kitchen? [197]

A. I don't know if he was in the kitchen or outside, but he just goes forth and back.

Q. Did anyone tell you to go aboard the "Blue Sky" on September 22nd?

The Court: Repeat the question.

(Question read by the reporter.)

Q. By Mr. Fall: Did anybody tell you to come there on the day that Mr. Evanisevich was hurt?

(Testimony of Mate Marinkovich.)

A. No.

Q. Where was Mr. Evanisevich when you saw him drinking beer? Where was Mr. Evanisevich then?

A. He was outside on the deck, and in the kitchen. He was all around.

Q. Were you in the pilot house at any time?

A. Yes, I was. I came in and go out again.

Mr. Gallagher: What is the answer?

(Answer read by the reporter.)

Q. By Mr. Fall: What time?

A. It was 11:00 o'clock, until 2:00 o'clock in the afternoon.

Q. You were in the pilot house from 11:00 o'clock until 2:00 o'clock in the afternoon, is that correct? A. I was inside and outside.

Q. What time was it that you saw Mr. Evanisevich have the first can of beer?

A. I don't know. I am not sure. It was 11:00 or [198] 11:30.

Q. Where was he?

A. He was in the kitchen, and out again; came in again and out again.

Q. Where was he when he had the second can of beer?

A. I don't know where we were, but talking about Ham and Eggs.

Q. That was the last can of beer he had, wasn't it? A. No.

(Testimony of Mate Marinkovich.)

Q. How many cans did he have before lunch?

A. I don't know how many he had.

Q. How many did he have during lunch?

A. Who knows? I don't know. I didn't watch everybody.

Q. How many did he have after lunch?

A. I know he was drinking right along.

The Court: No. How many did he have after lunch? Tell him to answer that if he knows.

A. He would drink one, and take another one. I don't know how much he had.

Mr. Fall: I ask that the answer be stricken—Everything but “I don't know how much”.

The Court: Motion denied.

Q. By Mr. Fall: Did you leave the boat before Mr. Evanisevich?

A. One minute before I gave my hand to try to help [199] him out from the boat, and he refused.

Mr. Fall: I ask that everything be stricken aside from “One minute before”.

The Court: Read the question and answer.

(Record read by the reporter.)

Mr. Fall: I think the whole answer should be stricken as being non-responsive.

The Court: It may go out.

Q. By Mr. Fall: Did you leave the boat before Mr. Evanisevich?      A. Yes.

Q. How long after you left the boat did Mr. Evanisevich leave?      A. Two minutes.



(Testimony of Mate Marinkovich.)

Q. Two minutes, did you say, or a minute after?

A. He said two minutes after.

The Court: Was it two minutes, or one minute?

A. I'm not sure, one or two minutes.

The Court: Go ahead. There isn't very much difference.

Q. By Mr. Fall: His answer is one or two minutes?

A. I am not sure; one or two minutes.

Q. How much beer did you have to drink?

A. I drank one beer. I don't drink much.

Q. Didn't you drink more than one can of beer?

A. One or two; not any more. [200]

Q. How many cans of beer did you see Jack Fabulich drink?

A. I saw him drink three or four.

Q. How many cans did you see John Zorotivich drink?

A. He drank six of them cans.

Q. Was he drunk?

A. He never was drunk, but he was happy.

Mr. Gallagher: Just a minute. May I have that? He was afraid did you say?

A. No; happy. He was drunk, but not too much.

The Court: That was John Zorotivich?

Mr. Fall: Yes. How about Dinco Botovich? How many cans did he drink?

A. I don't know. I didn't watch. Who knows?

Q. Did you see him drink any beer?

A. Yes.

(Testimony of Mate Marinkovich.)

Q. Do you recall whether he drank more than one can?

A. I can't say nothing. I don't know.

Q. Did you see Marko Cvitanich drink any beer?

A. I don't know. He drinks wine, but I didn't see him drink beer.

The Court: I think you have proceeded far enough for the purpose of testing this man's recollection.

Mr. Fall: Your Honor, I am doing more than that. I am trying to find out how many cans of beer were drank there. We know how many they had. [201]

The Court: The Court believes that you have proceeded far enough.

Q. By Mr. Fall: Were there any engineers working on the clutch, on the 22nd day of September?

A. There were Marko Cvitanich, and John Zorotivich; they were working on something.

Q. Were there any men working on the engine, or the clutch, who were not members of the crew?

A. No.

Mr. Fall: That is all.

#### Redirect Examination

Q. By Mr. Gallagher: Mr. Marinkovich, right after you got off of the boat there, did you say anything to Mr. Evanisevich?

Mr. Fall: To which we object as being incompetent, irrelevant and immaterial.

(Testimony of Mate Marinkovich.)

The Court: The Court can't tell just yet. It might be.

Mr. Fall: I will withdraw the objection.

A. I tell him "Let's go home."

Q. By Mr. Gallagher: "I told him he better go home"?

A. Let's go home."

The Court: "I told him let's go home."

Mr. Fall: I ask that the answer be stricken as being immaterial. [202]

The Court: The first time it will stand.

Mr. Gallagher: That was only preliminary. Did you say anything to Mr. Evanisevich about helping him off of the boat?

Mr. Fall: To which we object as leading and suggestive.

The Court: Overruled. Proceed.

Q. By Mr. Gallagher: Did you say anything about helping him off of the boat?

Mr. Fall: That is assuming that he had to be helped off.

The Court: Just a moment. The Court will decide this case on the evidence it believes material. This witness is having difficulty in understanding, in many ways; not only directly, but through an interpreter, and we are wasting a lot of time on these matters. If we had a jury it would be some justification for these continual objections on the part of both parties. It is a matter that is not so material, and certainly I think it would not be in error either way, and the Court will not consider

(Testimony of Mate Marinkovich.)

it if it does not believe it is material. Of course, if it is a matter that comes to the protection of your record, I think it is proper for you to make all the objections, and take exceptions, and make motions that you feel advised. And now read the question again. And have him answer. Objection overruled. [203]

(Question read by the reporter.)

A. No, I didn't say nothing.

#### Recross Examination

Q. By Mr. Fall: Mr. Marinkovich, are you related to Mr. Mason?      A. Yes.

Q. What relation?      A. I am his brother.

Q. Have you talked about this case with your brother, before you came into court?

A. We talked on our way from San Francisco, but we did not talk about the court.

Q. You never talked about this case with anyone since the day the accident happened?

A. No.

Mr. Gallagher: What did he say after that? [204]

A. He said, "I talked to the lawyer."

Mr. Gallagher: I would like to have the whole of the answer. I don't think the interpreter meant to leave it out.

A. He said, "No, but I talked to the lawyer."

Q. By Mr. Fall: You talked about what you were going to testify in court, with Mr. Fabulich, didn't you?

(Testimony of Mate Marinkovich.)

A. He didn't say anything; he just say what I see.

Q. Did you talk with the cook?

The Court: I don't think you need to proceed any further. He said he talked with Mr. Gallagher about the case, and that is usual. [205]

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MARKO CVITANICH,

a witness called by and on behalf of the respondent,  
having been first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Gallagher: What is your name?

A. Marko Cvitanich.

Q. Where do you live, Mr. Cvitanich?

A. 251 14th Street, San Pedro.

Q. What is your occupation?

A. Fisherman.

Q. Are you also an engineer?           A. Yes, sir.

Q. Were you working on the "Blue Sky" in September, 1939?           A. In 1939, yes, I did.

Q. Do you remember the day when Mr. Evanisevich was hurt?           A. I do.

Q. How did you happen to go on board that day?

A. I happened, because the engine was not working right, you know, and the skipper told me to come down to the boat.

(Testimony of Marko Cvitanich.)

Q. The skipper gave you an order to go down to the boat?      A. And check up on the engine.

Q. And check up on the engine?      A. Yes.

Q. When did the skipper give you that order?

[206]

A. He gave me the order the night before.

Q. Who was present when he gave you that order?      A. I was, myself.

Q. Was Mr. Evanisevich present?

A. No, he was not.

Q. Where did you get that order?

A. I got it home, on the phone.

Q. Did Mr. Evanisevich do any work on board that boat the day he was hurt, that you saw?

A. No, he never did.

Q. Who was helping you that day?

A. Two of my men, assistant engineers.

Q. Who were they?

A. Johnny Zorotovich, and Bodich.

Q. Did you take any trial trip?

A. No, sir, we just go out to the ship.

Q. How far was that from where the boat was tied up in the morning?

A. About two miles.

Q. Was that out in the channel at all?

A. Inside the channel, in San Pedro Bay.

Q. Was the skipper on board at all on September 22, 1939?      A. No, he wasn't.

Q. Did you have any occasion to observe Mr.

(Testimony of Marko Cvitanich.)

Evanisevich, or see Mr. Evanisevich on board that day? [207]

A. No, he did not have to come down on the boat, because he did not have to do any kind of work on the boat.

Mr. Hall: I ask that that be stricken.

Mr. Gallagher: No objection.

The Court: It may go out.

Q. By Mr. Gallagher: Did you see Mr. Evanisevich on board the boat that day?

A. Yes, I did.

Q. What was he doing the times when you saw him? A. He wasn't doing anything.

Q. Where did you see him?

A. I saw him there on the deck.

Q. About how many times?

A. I saw him there a lot of times.

Q. What is that?

A. I saw him a lot of times.

Q. What time did you leave?

A. We left about 8:30.

Q. I mean what time did you get off of the boat? A. It was 3 o'clock.

Q. Did you leave after Mr. Evanisevich hurt himself? A. Yes, I did.

Q. Were you on deck at the time Mr. Evanisevich hurt himself? A. Yes, I was.

Q. Did you see Mr. Evanisevich eating or drinking anything [208] that day?

(Testimony of Marko Cvitanich.)

A. Yes, I saw him drinking about six or seven times.

Q. What? A. Cans of beer.

Q. Did you see him eat his lunch?

A. I saw him the first time in the morning, was about 9 o'clock; that was the first can of beer he took.

Q. About 9 o'clock in the morning?

A. Yes. The second time around 10 o'clock. After we had dinner, around 11 o'clock.

Q. Did you see the accident?

A. No, because I just happened to turn around at the time when he fell.

Q. Did you see him immediately before the accident? A. Just before, yes, I did.

Q. What was he doing just before the accident?

A. He was standing there on the rigging, the left foot in the rigging, and the right foot on the deck; then he was holding a can of beer in the right hand, and the left hand he was holding on himself.

The Court: Would you read the answer?

(Answer read by the reporter.)

Q. By Mr. Gallagher: Did you say his left hand was holding on himself, or by himself?

A. Yes, by himself, like this.

Q. Alongside of his body? [209]

A. Alongside of his body.

Q. Was he holding onto the rigging with his hands? A. No, he wasn't holding anything.



(Testimony of Marko Cvitanich.)

Q. How long had you known Mr. Evanisevich before the accident?

A. I know him since I think 1929.

Q. Had you seen him drink beer on other occasions, besides the day of the accident?

A. What do you mean? Some other places?

Q. Yes, had you seen him drink on other days?

A. Other days?

Q. Yes.

Mr. Hall: Just a minute; to which we object. I don't see the purpose of that.

The Court: I think the objection is good.

Mr. Gallagher: I will withdraw the question.

Q. Mr. Cvitanich, state whether in your opinion Mr. Evanisevich was or was not under the influence of liquor at the time the accident happened.

A. Yes, I would say he was drunk.

Q. Did you go to San Francisco during the sardine season in 1939?

A. Yes, I did.

Q. What was the nature of that work up there, and by that question I mean, did you deliver any sardines to ships or vessels at sea, or did you bring them in to canneries on shore? [210]

A. No, we delivered the fish to the shore, to the canneries.

Q. How long would the trips away from the wharf or the canneries last when you would go after the sardines? Would you come back each day, or stay out over night?

(Testimony of Marko Cvitanich.)

A. Sometimes we stayed out over night, most of the time we came in.

Q. When you came in, what did the crew do with the fish, with the sardines?

A. Do you mean where we got a load of fish?

Q. Yes, when you got a load of fish, you brought it in to the wharf, and what did the crew do with the fish?

A. Unloaded the fish at the cannery.

Q. Where would they take the fish—just throw it on the dock, or take it in to the canneries?

A. No, just throw it, like an elevator.

Q. Like these escalators out here?

A. Something like that; a great big basket, and dump it alongside of the boat.

Q. Was that taken up into the canneries?

A. Yes, it does.

Mr. Gallagher: Take the witness.

#### Cross Examination

Q. By Mr. Fall: What relation are you to Mr. Mason? A. He is my brother-in-law. [211]

Q. Do you own part of the boat?

A. Yes, I am.

Q. You fished sardines in 1939, in other places than San Francisco, didn't you?

A. I fished San Francisco.

Q. You fished down here locally, too, didn't you?

Mr. Gallagher: Just a minute. The question is objected to upon the ground that it does not state what for.

(Testimony of Marko Cvitanich.)

Mr. Fall: For sardines.

Mr. Gallagher: What month? It would not be material unless it was part of this particular season.

Mr. Fall: That is just what I am getting at; I am trying to find out if it was.

The Court: I understood it was for 1939. Is there more than one sardine season in one year?

Mr. Gallagher: No, your Honor, but they fish in more than one place for sardines in the season.

The Court: You may answer the question.

A. Your Honor, it was later we came back, and leave for Frisco; we were fishing in Pedro for a while.

The Court: Did you fish in San Pedro?

A. Yes, a while.

The Court: Anywhere else beside San Pedro and San Francisco?

A. No, just the two places.

The Court: Just the two places? [212]

A. Yes.

The Court: During the year 1939, for sardines?

A. Yes. We started fishing in 1939, and in fact we fished in 1940, in San Pedro; came down in January.

Q. By Mr. Fall: You came here about Christmas?

A. Right after Christmas. January, I believe.

Q. To whom did you sell your fish down here?

A. We fished for Van Camp.

Q. Did you sell any to the reduction plant?

(Testimony of Marko Cvitanich.)

A. No.

Q. Whereabouts did you fish, out in the deep water?

A. All over, the islands, and all the deep water.

Q. How far out would you go?

A. Most we would go out from Pedro about 9 hours; that was Santa Cruz Island.

Q. And how many miles would that be?

A. 10 hours?

Q. Yes.

A. It would be about 94 or '5 miles.

Q. About 94 or '5 miles?      A. Sure.

Q. How about up at San Francisco, how far out would you go?

A. It all depends. Sometimes we would go outside the lightship, and we would go all around.

Q. How far was the lightship? [213]

A. It is about an hour from San Francisco.

Q. About 90 miles?

A. About that. I never checked it up, because I am the engineer on the boat, and don't check up on the time.

Q. Did you ever go out to the islands off San Francisco?

A. Yes, we used to go around there.

Q. That was over 30 miles?

A. You mean the Farallone Islands?

Q. Yes.

A. I don't believe we fished around there, because the fish were more close.

(Testimony of Marko Cvitanich.)

Q. Did you go out by the Farallone Islands at any time?      A. No, we did not.

Q. When you were fishing off San Francisco, about the furthest you went would be about how many miles?      A. What did you say?

Q. About how far out would be the furthest you went when you were fishing off San Francisco?

A. Sometimes we would go down to Point Reyes.

The Court: What was the furthest, 20 miles, or 30 miles?      A. We would never go very far.

The Court: How far, 15 miles?

A. A couple of miles.

Q. By Mr. Fall: Point Reyes is how far from San Francisco? [214]

A. I can't tell you for sure. It is about 4 hours. I am not sure.

Q. That would be about 30 miles, wouldn't it?

A. That couldn't be 30 miles, when the boat makes about 10 miles; that would be about 40 miles.

Q. How much beer did you have to drink on the 22nd of September?

A. I have about two cans of beer.

Q. Do you know how much beer was left when you went home?

A. I am not sure, because I didn't go in to the icebox and check up on it.

Q. You didn't go there?      A. No.

Q. You were working on the engine, in the engine-room?      A. Yes.

(Testimony of Marko Cvitanich.)

Q. Most of the day, weren't you?

A. No, I wasn't because I had the engineer working there. I checked up there about an hour; we came back out in a ship, so I didn't have to do any kind of work on the [215] deck at all.

Q. What did you do after you returned to the ship?

A. Stayed on the boat, like the rest of the guys, or walking back and forth.

Q. What were you doing? You stayed on the boat?

A. Stayed on the boat, and that was all; for nothing.

Q. Do you recall what any of the other men had to drink?

A. Some of them guys took one can or two.

Q. Were you drunk?

A. No, sir, I wasn't. I never was drunk, neither.

Q. How about John Zorotovich, was he working with you?      A. Yes.

Q. Was he drunk?      A. No.

Q. Did he have anything to drink?

A. He had a beer. He never drank much; he had one or two cans himself.

Q. He did not have more than one or two cans?

A. I don't believe he did.

Q. Was anyone else drunk?      A. No.

Q. You had beer every day there, in that hot weather, didn't you?

(Testimony of Marko Cvitanich.)

A. Yes. On the 22nd, I believe I bought a case, the first case of beer; and then on the 26th I think there was [216] bought another case of beer.

Mr. Gallagher: I think that is immaterial.

Q. By Mr. Fall: What date did this accident happen? A. It happened on the 26th.

Q. On the 26th? A. Of September, yes.

Q. What day of the week was that?

A. I don't know what day of the week, because we don't check on the days. Lots of times I don't know when it is Sunday. Fishermen don't look up on this time.

Q. Did you work the day before the 26th?

A. No, I didn't.

Q. Did you work on the 24th?

A. No, I didn't. Nobody had to go on the boat, because we did not have to do any kind of work between those days. The last day we worked was the 22nd.

Q. The last day you worked was the 22nd?

A. Yes.

Q. But the accident did not happen that day?

A. It happened on the 26th.

Q. It happened on the 26th?

A. Yes, around 2:30 in the afternoon.

Q. How many were on board the boat at 2:30?

A. We were about eight men.

Q. About eight men?

A. No, it wasn't that many. Wait a minute, because [217] some of the guys left for home before

(Testimony of Marko Cvitanich.)

that. It was Fabulich, me, Matey Marinkovich, and Jerry Marinkovich.

Q. You say you didn't work the day before on the boat?      A. No.

Q. How about two days before?

A. I know well I do any kind of work around the boat.

Q. Were you on board the boat the day before?

A. No, I wasn't.

Q. Were you on board the boat two days before?

A. I would tell you the same answer a lot of times before. Why you ask me every time?

Q. How many days before he was injured was the last time you were on board the boat?

A. What did you say?

The Court: Read the question.

(Question read by the reporter.)

A. It was on the 22nd, about four days before.

Q. By Mr. Fall: Four days before?

A. Yes.

Q. Did you work on the boat on the 22nd?

A. No.

Q. How about the 20th?      A. No.

Q. How about the 19th?      A. No.

The Court: Don't proceed with it any further. That [218] is sufficient.

#### Redirect Examination

Mr. Gallagher: We will call Tom Mason.

Mr. Fall: At this time, your Honor, we will object to any testimony on the part of Mr. Mason.



(Testimony of Marko Cvitanich.)

He has been in the courtroom throughout this period of time. He is not a party to this action, and the court ruled that he was an interested witness, but this man is not a party to the action any more than the man who has just left the stand, who also was one of the owners of the boat.

The Court: Objection overruled.

Mr. Fall: May we have an exception? [219]

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TOM MASON,

recalled as a witness on behalf of the respondent, having heretofore been duly sworn, testified as follows:

Q. By Mr. Gallagher: Mr. Mason, you were master of the "Blue Sky" in 1939?

A. Yes, I was.

Q. How long have you been master of the "Blue Sky"?

A. Since the boat was built, in 1930.

Q. You testified, if I recall, that you were not on the boat on the day when Mr. Evanisevich was hurt?

A. No, I wasn't.

Q. Did you talk to Mr. Evanisevich the day before he was hurt?

A. Yes.

The Court: Mr. Gallagher, will you keep in mind that this witness has been already rather extensively examined, and not cover those matters twice?

(Testimony of Tom Mason.)

Mr. Gallagher: The reason I am going into this matter now is that my recollection is different from Mr. Fall's. Mr. Fall stated yesterday, I think, that Mr. Mason testified that the day before the accident he had told Mr. [220] Evanisevich to go on board the boat and do some work. I don't remember any such testimony, and I want to cover that subject matter.

The Court: Go ahead.

Q. By Mr. Gallagher: Mr. Mason, do you remember the day that Mr. Evanisevich was hurt?

A. Yes.

Q. You weren't on the boat that day, but you know the day? A. Yes.

Q. Did you have a conversation with Mr. Evanisevich the day before he was hurt? A. I had.

Q. Mr. Mason, state whether you did or did not tell Mr. Evanisevich to go on board the boat on the day of the [221] accident.

A. I didn't tell him to go on the boat.

Q. Did you have any conversation with him, either the day of the accident or the day before the accident, about his doing any work on the boat?

A. No, nothing.

The Court: My recollection about that is, that he testified, when he was on examination before, that about September 21st he called everybody to go to work. That's the notation the court has from his testimony. I think you had better refer to Mr. Dewing's record in regard to it. Proceed.

(Testimony of Tom Mason.)

Q. By Mr. Gallagher: On the day before the accident did you tell any of the men to go to work on the 22nd of September, 1939, if that was the date of the accident?

A. The day of the accident, did you say?

Mr. Gallagher: No.

The Court: The day before.

Q. By Mr. Gallagher: The day before the accident did you tell any members of the crew to go on board the next day?

A. There was my partner; I called him over the phone, and I told him to go down to the boat, and I also called up three or four members of the crew.

Q. Who were the members of the crew that you told to go down on the boat on the day of the accident?

A. John Zorotovich, Zinko Botovich; Fabulich was living [222] on the boat. The cook, I told him to go down also.

The Court: And Mr. Cvitanich, he was your partner? A. That's right.

The Court: He was the one that you called?

A. That's right.

Q. By Mr. Gallagher: Did you call each one of those men on the telephone, or were they all together in one place? [223]

A. I met them on Thirteenth Street, by the coffee house, and I told them.

Q. All of them?

A. All of them, except my partner Cvitanich.

(Testimony of Tom Mason.)

Q. Was Mr. Evanisevich there at that time?

A. No.

Q. Mr. Mason, during the sardine season, right after you got up to San Francisco, was there any trouble or difficulty?      A. There was a strike.

Q. What is it?      A. There was a strike.

Q. What kind of a strike was it?

A. It was a strike amongst our cannery workers; the C. I. O. and the American Federation have some dispute over it.

Q. Did you do any fishing with your boat during that strike?      A. No, I have not.

Q. Why not?

A. On account of the C. I. O. men, they wouldn't cross the picket line; they refused to go out.

Q. Who refused to go out?

A. The C. I. O. members. My crew.

Q. How long was the boat tied up by the refusal of some of your crew members to cross that picket line? [224]      A. Two weeks.

Mr. Fall: To which we object as incompetent, irrelevant and immaterial; it is not binding at all upon this libellant.

The Court: He has answered. The answer may stand. Proceed.

Mr. Fall: Exception, your Honor.

Q. By Mr. Gallagher: Mr. Mason, in the course of hiring fishermen on the "Blue Sky" in the last couple of years, have you ever had a fisherman at

(Testimony of Tom Mason.)

the beginning of the season, and such fisherman quit before the season was over?      A. Yes, I have.

Q. How many?

A. In 1939, four of them quit on me.

Q. Who were they?

A. John Zorotovich was the first one. He only stayed with me when I went to San Francisco for sardines, one month.

Q. John Zorotovich?      A. That is right.

Q. Was that the season that commenced right after this accident happened?

A. That is right.

Q. He quit after one month?      A. Yes.

[225]

Q. Was that with your consent?      A. No.

Q. Who else quit without your consent before the season was over?

Mr. Fall: To which we object. I can't see the materiality here of this line of questioning. It certainly would not prove or disprove any issue before the court in this matter.

The Court: I don't think it is a proper method of proving custom. You may ask him if he knows whether there was such a custom or not.

Q. By Mr. Gallagher: Mr. Mason, do you know whether there has been any custom for the fishermen to quit whenever they pleased, after they signed on, or after they accepted employment?

A. Well, there was a custom before these agreements were drawn, as I stated yesterday.

(Testimony of Tom Mason.)

Mr. Fall: Just a minute. Then I would object.

Mr. Gallagher: He hasn't finished his answer yet. Let him finish.

The Court: Let him answer the question; then you may make a motion to strike.

Q. By Mr. Gallagher: State what you were going to state about a custom, before the agreement. What kind of a custom?

A. That he could quit any time, and I could fire [226] him any time; that was the custom.

Mr. Fall: That is objected to, and I move that the answer be stricken.

Mr. Gallagher: No objection.

The Court: Let it go out.

Q. By Mr. Gallagher: Mr. Mason, since these contracts between the union and the Boat Owners Association, is there any custom for the fishermen to stay in the employment of the boat owners for an entire season, without quitting?

Mr. Fall: To which we object as being an attempt to vary the terms of the instrument.

Mr. Gallagher: I withdraw the question.

Mr. Fall: It is contrary to the express provisions of the contract.

The Court: Overruled. You may answer.

Mr. Fall: Exception.

The Court: Read the question, Mr. Dewing.

(Question read by the reporter.)

A. The custom has been——

(Testimony of Tom Mason.)

The Court: Just answer yes or no; then you may explain it.

A. No, I guess.

The Court: Go ahead now and explain it.

A. Since the agreement was drawn they had to stay in the boat for the season, like the contract stated and [227] we could fire them for good cause, but still they must stay in the boat; still they quit.

The Court: Read the answer.

(Answer read by the reporter.)

Mr. Fall: To which we object as being non-responsive; not necessarily non-responsive; it doesn't appear to be intelligible.

The Court: The objection will be overruled. Do you know what the custom was when a man was hired, in your work of fishing off the coast of California in the Pacific Ocean, fishing sardines—do you know what the custom was, as to the length of employment when a man was hired?

A. There was no length, your Honor, at all, in the custom; before these agreements there was no limit at all that a man could come in a boat.

The Court: But in 1939, I am talking about, September, 1939; that was just before the sardine season started, wasn't it?

A. That is right.

Q. Do you know what the custom was at that time for the employment of a man who was hired to go on one of these fishing expeditions, or who was hired as a fisherman?

(Testimony of Tom Mason.)

A. He was hired for the period of time—well, hired for the season, but, still, as I stated, they don't obey, and they still quit. [228]

Q. Was that the custom or not, for them to act for the entire season? A. There was—

Q. Answer yes or no: Was it the custom for him to act for the entire season? You answer that yes or no, and then you may explain. A. Yes.

Q. Do you have any explanation to make?

A. No.

Q. Does that apply as well to the man who was to get his share of the proceeds, did the same custom apply?

A. The custom applied amongst employees, that when anything arose like that, to discuss the dispute amongst themselves, if they expect to give the man the share and help him, and he work or not, and things like that.

Q. I want to know just one thing, Mr. Mason: What was the custom when a man takes employment on a boat such as yours and such as these other men did here, Mr. Rancovich and Mr. Evanisevich and Mr. Zorotovich and those others—what was the custom with reference to the length of time for which their employment is to continue when they agree to go out with the ship owner for the purpose of catching sardines? Is that for the season or not? A. It is for the season.

Q. And that was for 1939? A. 1939. [229]



(Testimony of Tom Mason.)

Q. By Mr. Gallagher: Mr. Mason, was it customary for a man to stay on the job, without quitting, for the entire season, in 1939?

A. It was, yes.

Q. Now, in 1939, what kind of fishing did you do in San Francisco? A. Sardine fishing.

Q. Tell the judge how many trips you made, whether you stayed out two days, three days, one day, or what, when you were in San Francisco? What was the average trip?

A. The average trip, well, the average trip run about fifteen ton.

Q. Fifteen tons; that is what I mean.

The Court: How long did it take you?

Q. By Mr. Gallagher: Did you go out and stay out say a week, or did you go out and come back each day?

A. I go out now—we go out in the evening, and come back in the morning.

Q. When you come back where do you unload your catch? A. At the cannery.

Q. How do you do that unloading? Who takes it off of the boat?

A. My employees do it, take it off the boat.

Q. The crew? [230] A. Yes.

Q. Who attends to the navigation of the vessel, that is, who plotted the courses? A. I do.

Q. Did you, during that time? A. I did.

Q. How many men slept on board the vessel up in San Francisco?

(Testimony of Tom Mason.)

A. During the fishing we all slept in San Francisco on the boat.

The Court: Mr. Gallagher, for the information of the court, will you inquire as to the size of the vessel?

Q. By Mr. Gallagher: What is the size of the vessel? A. Eighty-one feet long.

Q. What is the gross tonnage, and the net tonnage?

A. The gross is 99, and the net tonnage is 51.

The Court: It is 81 feet long. What is the width? A. The width is 20.

The Court: 20 feet? A. That is right.

Mr. Gallagher: Take the witness.

#### Cross Examination

Q. By Mr. Fall: You say you called the cook on the 21st day of September, and told him to go down to the boat, to be on the boat on the 22nd? I beg your pardon—You [231] met him on Thirteenth Street by the coffee house, is that correct?

A. Yes, I met him after we left the boat, and I spoke to him again, and told him to be sure to be down.

Q. You had already talked to him before, while you were on the boat?

A. No, I wasn't talking to him, but I had the intention to tell him, but I didn't.

Q. To make sure about it, didn't tell him on the boat, before you left the boat on the 21st?

(Testimony of Tom Mason.)

A. No.

Q. How many men were working on the boat on the 21st?

A. On the 21st there was all of them there.

Q. Just what did you tell the cook, when you told him to come down on the 22nd? Tell the conversation in front of the coffee house.

A. I told him to get something to eat for the four men; there was going to be four to five men on the boat; to get something for them.

Q. Did you have anything to eat on the 21st, on board the ship?           A. On the 21st?

Q. Yes.           A. Yes, we had. [232]

Q. Wasn't the boat over in Terminal Island? Didn't you go over to Terminal Island on the 21st? [233]

A. No, we came from the outer harbor with the boat, with the net on, and I don't know what they do the next day, when they was down there.

Q. When did you put the net on the boat?

A. That was the last day before Mr. Evanisevich got hurt.

Q. You had it there by the Fisherman's Co-operative, did you?

A. No, the boat wasn't there.

Q. The net?           A. No.

Q. You had just tarred it a few days before, hadn't you?

A. No, it was tarred about a week before that or 10 days, or something like that.

(Testimony of Tom Mason.)

Q. Was it lying out there on the dock some place?           A. No.

Q. Whereabouts was it?

A. It was by the highway, way up above the ship, by the highway, in an empty lot.

Q. It wasn't in your home?

A. No. Part of it I have at home.

Mr. Fall: That is all. [234]

#### Redirect Examination

Q. By Mr. Gallagher: Mr. Mason, where was the net tarred?

A. That was a sardine net. It was tarred by the Fisherman's Cooperative.

Q. I mean, was it on shore?

A. Oh shore, yes.

Q. Was that net repaired before it was taken on board the vessel?           A. Yes, it had been.

Q. Where were the repairs made?

A. On shore. [235]

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Mr. Gallagher: That's all on behalf of the respondent and claimant. We rest, if your Honor please.

May it please your Honor, all of the evidence of the respondent and claimant having been submitted, I desire to state to the court that I do not believe the court would be justified in finding, nor do I

(Testimony of Tom Mason.)

believe the court would find, on the evidence, that the libelant was, at the time of the accident, drunk, or under the influence of intoxicating liquor, and that being my opinion, and my conviction, I think it is my duty to the court to ask leave to have the amendment to the answer stricken from the file on that [240] particular defense, to wit, the defense predicated upon the contention that any injury sustained by the libelant was the approximate result of intoxication; I ask that that be withdrawn.

The Court: The motion is granted.

Mr. Fall: Mr. Evanisevich, will you take the stand?

Mr. Gallagher: I assume that when a pleading is stricken from the files, and the defense is withdrawn, that the matter of taking depositions to refute that likewise falls?

The Court: Yes. [241]

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JOHN EVANISEVICH,

the libelant, recalled in rebuttal, testified further as follows:

Direct Examination

Q. By Mr. Fall: When you left the "Blue Sky", right after, or about the time that Mr. Marinkovich had gone on the dock, did you have any conversation with him at all?      A. With who?

Q. Mate Marinkovich, the man that went up just before you did.

(Testimony of Tom Mason.)

A. Mate Marinkovich?

Q. Did you have any conversation with him before you got on the dock?           A. No, sir.

Q. Just before you went on the dock?

A. No.

Q. Did he tell you to go home?

A. No. [242]

Q. Did Mr. Mason tell you, on the 25th day of September, 1939, to come down to the boat the next day?

Mr. Gallagher: I object to that on the ground that it is not rebuttal, and it is leading and suggestive. He testified to that in the case in chief.

The Court: I think he did. However, the court thinks there has been so much testimony regarding it, he will let him answer the question. Read the question.

(Question read by the reporter.)

A. He don't see me, but he says to the boys to go in the morning at 8 o'clock on the boat, and when I heard that, then I went on the boat.

Q. Where did that take place? Where did he tell you that?

A. The outer harbor on the boat.

Mr. Gallagher: I object to that as assuming a fact not in evidence.

Q. By Mr. Fall: When did he make the statement?

A. That was the day before I got hurt.

Q. Where was he, and where were you?

(Testimony of Tom Mason.)

A. That was on the boat, in the outer harbor.

Q. How many of the men were on the boat?

A. All the crew was on the boat, before we went home.

Q. Were they all present when that statement was made?      A. Yes. [243]



[Endorsed]: No. 10094. United States Circuit Court of Appeals for the Ninth Circuit. Tom Mason, Marco Cvitanich and Mitchell Cvitanich, Owners of Diesel Screw "Blue Sky", her tackle, apparatus, engines, furniture, etc., Appellants, vs. John Evanisevich, Appellee. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 23, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
For the Ninth Circuit

Case No. 10094

TOM MASON, et al.,

Appellants,

vs.

JOHN EVANISEVICH,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR THE CONSIDERATION THEREOF.

POINTS UPON WHICH APPELLANTS INTEND TO RELY ON THE APPEAL

(1) That the libellant was not in the service of the vessel at the time he sustained his injury.

(2) That the libellant unnecessarily and for his own pleasure and convenience loitered and entertained, amused and interested himself in matters and things entirely foreign to any service for the ship for an unreasonable length of time after all work which could possibly have been done in or about preparing the vessel for an intended fishing voyage had been completed.

(3) Whether under the general maritime law a seaman is entitled to wages to the end of an express



or implied contract of employment which conceivably might continue for many months during which time many separate voyages would be completed, or whether the right to wages expires at the end of each separate voyage in the event the seaman is injured when preparations are being made for a specific voyage.

(4) Whether a fisherman engaged in repairing or making a fishing net is engaged in maritime service merely because while doing so he is on a fishing boat moored to a wharf, or whether, if injured, under such circumstances he is subject to the workmen's compensation law of the state within which the vessel is located at the time of the injury.

(5) Appellants, by reference thereto, incorporate herein, as further points upon which they intend to rely on this appeal, paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XII, XIII, XIV, XV and XVI of the Assignment of Errors.

Dated: Los Angeles, California, this 27th day of March, 1942.

LASHER B. GALLAGHER,  
Proctor for Appellants.

(AFFIDAVIT OF SERVICE BY MAIL—  
1013a, C. C. P.)

State of California,  
County of Los Angeles—ss.

T. Johnson, being first duly sworn says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 458 South Spring St., Los Angeles, California; that on the 27th day of March, 1942, affiant served the within Statement of points on which appellants intend to rely on appeal, etc. on the Appellee in said action, by placing a true copy thereof in an envelope addressed to the proctor of record for said Appellee at the office address of said proctor, as follows:\* "David A. Fall, Esq., 333 West Sixth Street., San Pedro, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the proctor for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and/or\*\* there is a

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\*Here quote from envelope name and address of addressee.

\*\*When the letter is addressed to a post office other than "Los Angeles," strike out "and"; when addressed to "Los Angeles," strike out "or."

regular communication by mail between the place of mailing and the place so addressed.

T. JOHNSON

Subscribed and sworn to before me this 27th day of March, 1942.

[Seal]

[Illegible]

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Mar. 28, 1942. Paul P. O'Brien, Clerk.



[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLEE INTENDS TO RELY ON APPEAL AND SUPPLEMENTARY DESIGNATION OF PARTS OF RECORD NECESSARY FOR THE CONSIDERATION OF POINTS UPON APPEAL.

POINTS UPON WHICH APPELLEE INTENDS TO RELY UPON THE APPEAL

(1) There was no issue raised by the pleadings that Appellee waived the pleadings that Appellee waived his right to recover for medical expenses incurred in treatment of his injuries and the court therefore erred in finding Appellee waived his right to recover therefore.

Dated: San Pedro, California, this 17th day of April, 1942.

DAVID A. FALL,  
Proctor for Appellee.

### AFFIDAVIT OF SERVICE BY MAIL

(C. C. P. 1013a)

State of California,  
County of Los Angeles—ss.

Marion M. Fall, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business Address is 333 W. 6th St., San Pedro California; that on the 17th day of April, 1942, affiant served the within Statement of points on which appellee intends to rely on appeal & supplementary Designation of parts of record necessary for the consideration of points upon appeal on the Appellants in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Appellants, at the business Address of said attorney, as follows: \* "458 So. Spring St., Los Angeles, Calif. and by then sealing said envelope and depositing the same, with postage thereon

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\*Here quote from envelope name and address of addressee.

fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and/or\*\* there is a regular Communication by mail between the place of mailing and the place so addressed.

MARION M. FALL

Subscribed and Sworn to before me this 17th day of April, 1942.

[Seal]

DAVID A. FALL,

Notary Public in and for the County of Los Angeles, State of California.

\*\*When the letter is addressed to a postoffice other than Los Angeles, strike out "and"; when addressed to Los Angeles, strike out "or".

[Endorsed]: Filed Apr. 20, 1942. Paul P. O'Brien, Clerk.

